

MONTANA LEGISLATIVE HISTORY

Chapter 748 19 91

Bill H 131 S _____ Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) Jan 22 ☒ C

Appropriations Feb 01 ☒ C

Mar 06 ☒ C

_____ C

Date Out Feb 05 ☒ C

S. Committee on Judiciary

Hearing Date(s) Mar 22 ☒ C

_____ C

_____ C

_____ C

Mar 22 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

Note: A Conference Committee was appointed.
Its minutes were not recorded.

HOUSE FINAL STATUS

HB 131

1/09	REFERRED TO NATURAL RESOURCES		
1/10	FIRST READING		
1/14	HEARING		
1/15	COMMITTEE REPORT—BILL PASSED		
1/15	PLACED ON CONSENT CALENDAR		
1/17	3RD READING PASSED	99	1
	TRANSMITTED TO SENATE		
1/18	FIRST READING		
1/18	REFERRED TO NATURAL RESOURCES		
1/30	HEARING		
1/31	COMMITTEE REPORT—BILL CONCURRED		
1/31	PLACED ON CONSENT CALENDAR		
2/04	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
2/11	SIGNED BY SPEAKER		
2/11	SIGNED BY PRESIDENT		
2/11	TRANSMITTED TO GOVERNOR		
2/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 29		

EFFECTIVE DATE: 10/01/91

HB 127 INTRODUCED BY SIMPKINS

REQUIRING SECURING OF VEHICLE LOADS TO
PREVENT OBSTRUCTING HIGHWAYS

1/09	INTRODUCED		
1/09	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/10	FIRST READING		
1/24	HEARING		
1/29	TABLED IN COMMITTEE		

HB 128 INTRODUCED BY FAGG, ET AL

CLARIFY CRIME OF UNLAWFUL POSSESSION
OF INTOXICATING SUBSTANCE

1/09	INTRODUCED		
1/09	REFERRED TO JUDICIARY		
1/10	FIRST READING		
1/15	HEARING		
1/15	TABLED IN COMMITTEE		

HB 129 INTRODUCED BY FAGG, ET AL

IMPOUND VEHICLE OF PERSON DRIVING WHILE
LICENSE SUSPENDED OR REVOKED

1/09	INTRODUCED		
1/09	REFERRED TO JUDICIARY		
1/10	FIRST READING		
1/15	HEARING		
1/15	COMMITTEE REPORT—BILL NOT PASSED		
1/17	ADVERSE COMMITTEE REPORT ADOPTED	63	36

HB 130 INTRODUCED BY FAGG

INCREASE LICENSE SUSPENSION PERIOD FOR
REFUSAL OF ALCOHOL CONTENT TEST

1/09	INTRODUCED		
1/09	REFERRED TO JUDICIARY		
1/10	FIRST READING		
1/15	HEARING		
1/15	COMMITTEE REPORT—BILL NOT PASSED AS AMENDED		
1/17	ADVERSE COMMITTEE REPORT ADOPTED	61	38

HB 131 INTRODUCED BY BROOKE, ET AL

HUMAN SKELETAL REMAINS AND BURIAL SITE PROTECTION ACT

1/09	INTRODUCED		
1/09	REFERRED TO JUDICIARY		
1/10	FIRST READING		
1/22	HEARING		
2/05	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/09	2ND READING PASSED	91	6
2/09	TAKEN FROM ENGROSSING AND REREFERRED TO APPROPRIATIONS		
3/06	HEARING		
3/06	COMMITTEE REPORT—BILL PASSED		
3/09	2ND READING PASSED	74	21
3/12	3RD READING PASSED	78	20
	TRANSMITTED TO SENATE		
3/13	FIRST READING		
3/13	REFERRED TO JUDICIARY		
3/22	HEARING		
3/22	COMMITTEE REPORT—BILL CONCURRED		
3/23	2ND READING CONCURRED	47	0
3/25	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
4/01	SIGNED BY SPEAKER		
4/01	SIGNED BY PRESIDENT		
4/01	TRANSMITTED TO GOVERNOR		
4/05	RETURNED TO HOUSE WITH GOVERNOR'S AMENDMENTS		
4/10	2ND READING GOVERNOR'S AMENDMENTS NOT CONCURRED	73	23
	TRANSMITTED TO SENATE		
4/17	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	49	0
4/18	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	49	0
	RETURNED TO HOUSE		
4/19	CONFERENCE COMMITTEE APPOINTED		
4/23	CONFERENCE COMMITTEE REPORT NO. 1		
4/24	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	81	15
4/24	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	81	19
	SENATE		
4/23	CONFERENCE COMMITTEE APPOINTED		
4/23	CONFERENCE COMMITTEE REPORT NO. 1		
4/24	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
4/24	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
5/03	SIGNED BY SPEAKER		
5/03	SIGNED BY PRESIDENT		
5/03	TRANSMITTED TO GOVERNOR		
5/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 748		

EFFECTIVE DATE: 05/15/91 - SECTIONS 4, 13, 14, 16, 17
EFFECTIVE DATE: 07/01/91 - SECTIONS 1-3, 5-12, 15, 18

HB 132 INTRODUCED BY D. BROWN

CLARIFY PLACE OF TRIAL FOR TORT WHEN
DEFENDANT IS A NONRESIDENT

1/09 INTRODUCED
1/09 REFERRED TO JUDICIARY

HOUSE BILL NO. 131

INTRODUCED BY BROOKE, GAGE, REAM, BARNHART, CODY, O'KEEFE,
YELLOWTAIL, DARKO, WANZENRIED, J. RICE, GERVAIS, SVRCEK,
GRADY, DOHERTY, RUSSELL

IN THE HOUSE

JANUARY 9, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 10, 1991	FIRST READING.
FEBRUARY 5, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 7, 1991	PRINTING REPORT.
FEBRUARY 8, 1991	ON MOTION, CONSIDERATION PASSED.
FEBRUARY 9, 1991	SECOND READING, DO PASS. ON MOTION, TAKEN FROM ENGROSSING AND REREFERRED TO COMMITTEE ON APPROPRIATIONS.
MARCH 6, 1991	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
MARCH 7, 1991	PRINTING REPORT.
MARCH 9, 1991	SECOND READING, DO PASS.
MARCH 11, 1991	ENGROSSING REPORT.
MARCH 12, 1991	THIRD READING, PASSED. AYES, 78; NOES, 20. TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 13, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY. FIRST READING.
MARCH 22, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 23, 1991	SECOND READING, CONCURRED IN.

11

MARCH 25, 1991

THIRD READING, CONCURRED IN.
AYES, 48; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 25, 1991

RECEIVED FROM SENATE.

SENT TO ENROLLING.

MARCH 28, 1991

REPORTED CORRECTLY ENROLLED.

APRIL 1, 1991

SIGNED BY PRESIDENT.

SIGNED BY SPEAKER.

DELIVERED TO GOVERNOR.

APRIL 5, 1991

RETURNED FROM GOVERNOR WITH
RECOMMENDED AMENDMENTS.

APRIL 9, 1991

SECOND READING, CONSIDERATION
PASSED FOR THE DAY.

APRIL 10, 1991

SECOND READING, GOVERNOR'S
AMENDMENTS NOT CONCURRED IN.

IN THE SENATE

APRIL 17, 1991

SECOND READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

APRIL 18, 1991

THIRD READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

IN THE HOUSE

APRIL 19, 1991

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 23, 1991

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 23, 1991

CONFERENCE COMMITTEE REPORTED.

APRIL 24, 1991

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE SENATE

APRIL 24, 1991

CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 30, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 131
2 INTRODUCED BY Senators: 234 Reson 333
3 John Yellowtail, Clark, Smith, Mundy, Steve Howard, Russell
4 A BILL FOR AN ACT ENTITLED: "THE HUMAN SKELETAL REMAINS AND
5 BURIAL SITE PROTECTION ACT; CREATING A BURIAL PRESERVATION
6 BOARD; ESTABLISHING REPORTING AND NOTIFICATION PROCEDURES
7 REGARDING DISTURBANCE OF A BURIAL SITE; PROVIDING FOR FIELD
8 REVIEW AND SCIENTIFIC ANALYSIS; PROVIDING DISINTERMENT AND
9 REINTERMENT PROCEDURES; PROVIDING FOR FEES AND CIVIL AND
10 CRIMINAL PENALTIES; PROVIDING FOR DISPOSITION OF FEES,
11 GRANTS, DONATIONS, AND PENALTIES; EXEMPTING MEETINGS FROM
12 THE OPEN MEETING LAWS; PROVIDING FOR CONFIDENTIALITY OF
13 RECORDS; GRANTING THE BOARD RULEMAKING AUTHORITY;
14 APPROPRIATING MONEY FROM THE CULTURAL AND AESTHETIC PROJECTS
15 ACCOUNT; AMENDING SECTIONS 2-3-203, 2-6-101, AND 2-6-102,
16 MCA; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] grants to the burial protection board rulemaking authority to implement the provisions of this bill. At a minimum, it is the intent of the legislature that the board adopt rules:

- (1) governing the conduct of board business;
- (2) establishing and maintaining a registry of burial

sites located in the state;

(3) establishing criteria for conducting field reviews upon notification of a discovery of human skeletal remains, burial sites, or burial materials; and

(4) establishing guidelines and forms for the issuance of a permit for scientific analysis of human remains or burial materials.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [Sections 1 through 9] may be cited as the "Human Skeletal Remains and Burial Site Protection Act".

NEW SECTION. **Section 2.** Legislative findings and intent. (1) The legislature of the state of Montana finds that:

(a) the state and its citizens have an obligation to protect from disturbance or destruction all human skeletal remains, burial sites, and burial material, including those in marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds located on state or private lands;

(b) marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds are increasingly subject to pilferage, disturbance, and destruction for commercial purposes, including land development, agriculture, mining, and the sale of artifacts;

(c) private collection of artifacts may result in the destruction of burial sites. Existing law reflects the value society places on preserving human burial sites, but the law does not clearly provide equal and adequate protection or incentives to ensure preservation and protection of all burial sites in the state regardless of ethnic origin, burial context, or age.

(d) while some human skeletal remains and burial sites may be of interest to science, the needs of the scientific community to gather information and material from burial sites must be balanced with the legal, moral, and religious rights and obligations of tribal groups, next of kin, or descendants;

(e) preservation in place is the preferred policy for all human skeletal remains, burial sites, and burial material; and

(f) notwithstanding any other provision of law, [sections 1 through 9] are the exclusive laws governing the treatment of human skeletal remains, burial sites, and burial materials.

(2) It is the intent of the legislature to:

(a) ensure that all burials be accorded equal treatment and respect for human dignity without reference to ethnic origin, cultural background, or religious affiliation;

(b) provide adequate protection for all interests

related to any burial site encountered during archaeological excavation or agricultural, mining, construction, or other ground-disturbing activity on state and private lands without causing avoidable or undue delay or hardship for any person who has an interest in using the land on which the burial site is located;

(c) recognize the interests, concerns, and obligations of those having a kinship, tribal, cultural, or religious affiliation with the burial site and balance those interests against the interests of scientists, landowners, and developers; and

(d) provide to the board an exemption from the open meeting and public records laws when public disclosure of the location of a burial site could result in pilferage, disturbance, or destruction of the site.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 9], the following definitions apply:

(1) "Board" means the burial preservation board established in [section 4].

(2) "Burial material" means any item found at the burial site or with the human skeletal remains and directly associated with the burial or burial site.

(3) "Burial site" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were

intentionally deposited as a part of the death rites or ceremonies of a culture.

(4) "Human skeletal remains" means any part of the human body in any state of decomposition.

(5) "Marked, unmarked, unrecorded, registered, or unregistered grave or burial ground" means any place, including a cemetery, where human skeletal remains are or have been interred.

(6) "Scientifically justifiable" means that the human skeletal remains or burial material has a potential to address specific research questions in the science of anthropology, history, or biology.

(7) "Tribal group" means an Indian tribe recognized by the United States secretary of the interior or recognized as a tribe by other Indian nations.

NEW SECTION. Section 4. Board -- composition -- rights -- responsibilities. (1) There is a burial preservation board. The board is composed of:

(a) one person appointed by the tribal governmental body of each of the seven Indian reservations in Montana;

(b) one person appointed by the Little Shell band of Chippewa Indians;

(c) one person appointed by the Montana state historic preservation officer;

(d) a representative of the Montana archaeological

association appointed by the coordinator of Indian affairs;

(e) one physical anthropologist appointed by the state medical examiner; and

(f) a representative of the Montana coroner's association appointed by the coordinator of Indian affairs.

(2) The board shall:

(a) provide for the establishment and maintenance of a registry of burial sites located in the state;

(b) designate the appropriate member or members of the board, or a representative or representatives of the board, to conduct a field review upon notification of the discovery of human skeletal remains, a burial site, or burial materials;

(c) assist interested landowners in the development of agreements with the board for the treatment and disposition, with appropriate dignity, of human skeletal remains and burial material;

(d) mediate, upon application of either party, disputes that may arise between a landowner and known descendants that relate to the treatment and disposition of human skeletal remains and burial material;

(e) assume responsibility for final treatment and disposition of human skeletal remains and burial material if the field review recommendation is not accepted by the board's representatives and the landowner;

(f) establish a nonrefundable application fee, not to exceed \$50, for a permit for scientific analysis of human skeletal remains or burial material from burial sites as provided by [section 6];

(g) issue permits authorizing scientific analysis;

(h) accept grants or real or in-kind donations to carry out the purposes of [sections 1 through 9];

(i) adopt rules necessary to administer and enforce the provisions of [sections 1 through 9]; and

(j) perform any other duties necessary to implement the provisions of [sections 1 through 9].

(3) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(4) Members of the board shall serve without pay but are entitled to reimbursement for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503.

NEW SECTION. **Section 5. Inadvertent disturbance -- reporting requirements -- field review.** (1) A person who by archaeological excavation or by agricultural, mining, construction, or other ground-disturbing activity inadvertently disturbs or discovers human skeletal remains, a burial site, or burial material shall immediately notify the county coroner. Failure to notify the county coroner subjects a person to the penalty provided in [section 8].

(2) Upon discovery of a burial site that is reasonably suspected to overlie adjacent remains, excavation or further disturbance must cease until the coroner has determined that the remains are not subject to the provisions of Title 46, chapter 4, part 1 or 2, or any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death. The coroner shall make his determination within 2 working days from the time the person responsible for the excavation notifies him of the discovery or recognition of the remains. If possible, the coroner shall make his determination without removing or causing further disturbance of the remains.

(3) If the coroner determines that the remains are not subject to his authority, he shall telephone the state historic preservation officer within 24 hours. Within 24 hours of notification, the state historic preservation officer shall contact the landowner and the board or landowner and the board member representing the nearest reservation and notify them of the discovery of human skeletal remains, a burial site, or burial material.

(4) If the state historic preservation officer cannot be contacted, the coroner shall notify a member of the board or the law enforcement agency of the nearest reservation within 24 hours. The board or the agency shall immediately notify the landowner and the board member representing that

reservation.

(5) Within 36 hours of notification of a discovery of human skeletal remains, a burial site, or burial material, the board shall designate representatives to conduct, with the permission of the landowner, an initial field review. If the field review cannot be completed within the next 36 hours, the board's representatives shall negotiate with the landowner or his representative for a reasonable time extension to complete the review. The field review must include:

(a) a determination of whether the site can be preserved;

(b) negotiation with the landowner concerning onsite reburial or disinterment and reburial; and

(c) a recommendation, including a timeframe, concerning final treatment or disposition of the human skeletal remains or burial material.

(6) If the board's representatives fail to make a recommendation or if the landowner and the board cannot agree and mediation fails to provide a resolution acceptable to the landowner and the board, the board shall oversee the reinterment of the human skeletal remains and burial material with appropriate dignity in an alternate location not subject to further subsurface disturbance.

NEW SECTION. **Section 6.** Scientific analysis -- permit

required. (1) Although onsite reburial is preferred, the board may, upon petition by a person seeking permission to perform scientific analysis, grant a permit for the scientific removal and analysis of human skeletal remains and burial material upon proof and determination by the board that the analysis is scientifically justifiable. A petition for a permit must include:

(a) payment of the nonrefundable application fee provided for in [section 4]; and

(b) a brief narrative describing the methodology to be used, the timeframe needed to complete the scientific study, and any other information specifically requested by the board relating to the proposed study.

(2) The methodology proposed must be reviewed by the state historic preservation officer or his designated representative and the physical anthropologist on the board, and a recommendation must be made to the full board. Once approved by the board, any change in methodology or in the timeframe must be approved by the board before the original timeframe expires.

(3) A permit for scientific analysis issued by the board is subject to terms, conditions, and procedures prescribed by the board and must include the condition that a permittee shall pay all costs of excavation, study, and disposition.

(4) If the board denies a permit upon a finding that scientific analysis is not justifiable, the board must provide the applicant with a written statement outlining the grounds for its finding. The applicant may appeal the decision of the board under the provisions of Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(5) The board may suspend or revoke a permit pursuant to the Montana Administrative Procedure Act upon a finding that the permittee has violated any provision of [sections 1 through 9] or any term, condition, or procedure of a permit issued by the board.

NEW SECTION. Section 7. Nondisclosure of records. The state historic preservation officer, in consultation with the board, shall maintain burial site records that are separate and distinct from those in the cultural resource registry and that are necessary to administer [sections 1 through 9]. Burial site records are confidential and available only to federal and state personnel, or their appointed representatives, who are legally charged with administering laws protecting cultural resources. However, statistical information compiled from burial site records must be made available to the general public.

NEW SECTION. Section 8. Prohibited acts -- penalties.
(1) After July 1, 1991, a person may not:

(a) purposely or knowingly pilfer, disturb, destroy, or permit pilferage, disturbance, or destruction of a marked, unmarked, unrecorded, registered, or unregistered grave or burial ground or of burial material;

(b) for commercial use, knowingly possess, buy, sell, transport, barter, or display human skeletal remains or burial material acquired in violation of [sections 1 through 9]; or

(c) without consent of the board, purposely or knowingly disclose information that is designated as confidential by the board and that may lead to pilferage, disturbance, or destruction of a burial site.

(2) A person convicted under the provisions of subsection (1)(a) or (1)(b) is guilty of a felony and may be fined an amount not to exceed \$10,000, be imprisoned for not more than 1 year, or both. A person convicted of a subsequent violation of subsection (1)(a) or (1)(b) is guilty of a felony and may be fined an amount not to exceed \$100,000, be imprisoned for not more than 5 years, or both.

(3) A person convicted under the provisions of subsection (1)(c) is guilty of a misdemeanor and may be fined an amount not to exceed \$5,000, be imprisoned for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(c) is guilty of a felony and may be fined an amount not to exceed \$10,000, be

1 imprisoned for not more than 1 year, or both.

2 (4) A person who fails to give notice as required by
3 [section 5(1)] is guilty of a misdemeanor and may be fined
4 an amount not less than \$100 or more than \$500.

5 (5) In addition to or in lieu of any penalty imposed by
6 this section, the board, upon a finding that a person has
7 violated any provision of this section or any term or
8 condition of a permit issued under [section 6], may impose a
9 fine not to exceed \$2,000 for each violation. A fine may be
10 imposed only upon notice and following a hearing conducted
11 pursuant to the Montana Administrative Procedure Act.

12 (6) This section does not apply to a person who,
13 pursuant to archaeological excavation or agricultural,
14 mining, construction, or other ground-disturbing activity,
15 inadvertently disturbs a burial site if, by the most
16 expeditious means available, the disturbance is reported to
17 the county coroner pursuant to [section 5] and if no further
18 disturbance occurs.

19 NEW SECTION. **Section 9.** Criminal enforcement and civil
20 actions -- costs. (1) The state and its political
21 subdivisions are responsible for enforcement of [sections 1
22 through 9]. A criminal action may be initiated by a county
23 attorney for violation of [sections 1 through 9] upon
24 request of the board. Civil actions for damages resulting
25 from violations of [sections 1 through 9] may be initiated

1 by the board.

2 (2) Costs of a civil action to enforce the provisions
3 of [sections 1 through 9] must be awarded to the successful
4 complainant.

5 **Section 10.** Section 2-3-203, MCA, is amended to read:

6 "2-3-203. Meetings of public agencies and certain
7 associations of public agencies to be open to public --
8 exceptions. (1) All meetings of public or governmental
9 bodies, boards, bureaus, commissions, agencies of the state,
10 or any political subdivision of the state or organizations
11 or agencies supported in whole or in part by public funds or
12 expending public funds must be open to the public.

13 (2) All meetings of associations that are composed of
14 public or governmental bodies referred to in subsection (1)
15 and that regulate the rights, duties, or privileges of any
16 individual must be open to the public.

17 (3) Provided, however, the presiding officer of any
18 meeting may close the meeting during the time the discussion
19 relates to a matter of individual privacy and then if and
20 only if the presiding officer determines that the demands of
21 individual privacy clearly exceed the merits of public
22 disclosure. The right of individual privacy may be waived by
23 the individual about whom the discussion pertains and, in
24 that event, the meeting shall be open.

25 (4) However, a meeting may be closed to discuss a

1 strategy to be followed with respect to collective
 2 bargaining or litigation when an open meeting would have a
 3 detrimental effect on the bargaining or litigating position
 4 of the public agency or when information acquired from an
 5 open meeting could result in pilferage, disturbance, or
 6 destruction of a burial site.

7 (5) Any committee or subcommittee appointed by a public
 8 body or an association described in subsection (2) for the
 9 purpose of conducting business which is within the
 10 jurisdiction of that agency shall be subject to the
 11 requirements of this section."

12 **Section 11.** Section 2-6-101, MCA, is amended to read:

13 "2-6-101. Definitions. (1) Writings are of two kinds:

14 (a) public; and

15 (b) private.

16 (2) Public writings are:

17 (a) the written acts or records of the acts of the
 18 sovereign authority, of official bodies and tribunals, and
 19 of public officers, legislative, judicial, and executive,
 20 whether of this state, of the United States, of a sister
 21 state, or of a foreign country;

22 (b) public records, kept in this state, of private
 23 writings, except as provided in 22-1-1103 and [section 7].

24 (3) Public writings are divided into four classes:

25 (a) laws;

1 (b) judicial records;

2 (c) other official documents;

3 (d) public records, kept in this state, of private
 4 writings.

5 (4) All other writings are private."

6 **Section 12.** Section 2-6-102, MCA, is amended to read:

7 "2-6-102. Citizens entitled to inspect and copy public
 8 writings. (1) Every citizen has a right to inspect and take
 9 a copy of any public writings of this state, except as
 10 provided in 22-1-1103, in [section 7], and as otherwise
 11 expressly provided by statute.

12 (2) Every public officer having the custody of a public
 13 writing which a citizen has a right to inspect is bound to
 14 give him on demand a certified copy of it, on payment of the
 15 legal fees therefor, and such copy is admissible as evidence
 16 in like cases and with like effect as the original writing."

17 **NEW SECTION. Section 13.** Disposition of fees, grants,
 18 donations, and penalties. The board shall deposit any fee,
 19 grant, or donation received under [section 4] or any penalty
 20 amount imposed under [section 8] into the cultural and
 21 aesthetic projects account provided for in 15-35-108, to be
 22 used to pay expenses for board meetings or expenses incurred
 23 in conducting field reviews.

24 **NEW SECTION. Section 14.** Appropriation. There is
 25 appropriated \$5,000 from the cultural and aesthetic projects

1 account provided for in 15-35-108 to the board for fiscal
2 year 1992 to be used to pay expenses for board meetings or
3 expenses incurred in conducting field reviews.

4 NEW SECTION. **Section 15.** Severability. If a part of
5 [this act] is invalid, all valid parts that are severable
6 from the invalid part remain in effect. If a part of [this
7 act] is invalid in one or more of its applications, the part
8 remains in effect in all valid applications that are
9 severable from the invalid applications.

10 NEW SECTION. **Section 16.** Effective dates. (1) [Section
11 4 and this section] are effective on passage and approval.

12 (2) [Sections 1 through 3 and 5 through 15] are
13 effective July 1, 1991.

-End-

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on January 22, 1991,
at 8:10 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chair (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Legislative Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

HEARING ON HB #198

REDUCE TIME FOR FILING POSTCONVICTION RELIEF PETITION

Presentation and Opening Statement by Sponsor:

REP. RICE, HOUSE DISTRICT 43, stated this particular issue which is being addressed in a big bill in the Senate which is the general revisions to the full general procedure section votes, addresses the same issues this bill does and I suggest to the committee to Table HB #198 and discuss it when the big bill comes out of the Senate.

their laws and codes to include all indian people who reside on the reservation and civil and criminal jurisdiction. It is my belief that with out having criminal jurisdiction over non-member Indians an administrative nightmare is created.

Opponents' Testimony: none

Questions From Committee Members:

REP. BOHARSKI asked Ms. Fleurry what has been the practice of the tribes concerning crimes with the three groups of people involved? Ms. Flurry said tribes do not have criminal jurisdiction over non-tribal members. Until "Duro" tribes have jurisdiction over any indian person who commits a crime on the reservation against any person.

Closing by Sponsor:

REP. RUSSELL stated this is a resolution that would be helping our congressional delegation that would further the situation for help in giving misdemeanor delegation to the tribal government.

HEARING ON HB #131
HUMAN SKELETAL REMAINS AND BURIAL SITE PROTECTION ACT

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE BROOKE, HOUSE DISTRICT 56, stated this bill addresses what our State policy will be with regard to skeletal remains and unmarked burial sites. We are dealing with those skeletal remains, not necessarily property. These pieces of discovery are from centuries ago we are trying to converge those items with the Montana Codes Annotated. Currently, Montana has no statutes that provide any procedures on how unmarked burial sites are regulated. State law regulates cemeteries but not unmarked burial sites. As a result, there is no consistency on how county coroners treat remains and burial material. This bill is intended to provide consistent procedure for what is now occurring. It is not intended to change or supersede any other powers of the county coroners or the state medical examiner.

Because of religious and cultural beliefs stemming from a fundamental belief in respect of the dead, most Native Americans desire that their ancestors' remains be put back into the earth. Once the coroner determines the remains are not involved with any criminal investigations all remains are returned to the State Board.

In this bill, we have a provision for an open meeting law exemption. The purpose of the bill is to protect burial sites once discovered. The only time the board would be involved would

be to discuss the site and possible discovery location. Also in a discovery the whole board does not have to meet. It can be 2 or 3 members from a 9 or 11 member board. They do not meet on a regular basis. We are asking for \$5000 appropriations to be drawn from the cultural and aesthetics project account. The section that enables this fund is vague and does not list any criteria other than that grants are for the purpose of cultural and aesthetics projects. It was thought if this bill deals with the protection of burial sites, it would be considered cultural. This is an area that it certainly up for debate. I urge your careful consideration of this bill.

Proponents' Testimony:

Gloria Hermanson, representing the Montana Cultural Advocacy, gave written testimony in favor of HB #131. EXHIBIT 3

Lawrence Sommer, Director, Montana Historical Society, gave written testimony in favor of HB #131. EXHIBIT 4

Karen Atkinson, Tribal Attorney, Salish & Kootenai Tribes, stated they have two amendments for HB #131. These have been agreed upon by all tribes. In the past, tribes have been cheated out of precedence. Human remains have been studied, used for data, and stored in the name of science. Recently 31 states have passed legislation to protect unmarked graves. Today the Indian Tribes of Montana are asking you to extend these protections that already exist to unmarked burials.

Patrick Chief Stick, Sr., Tribal Legal Department, gave written testimony in favor of HJR 9. EXHIBIT 5

Paul Johnson, Assistant Attorney General State Medical Examiner, stated he is here as a proponent of the bill with the provision of the amendments that have been admitted by the State Medical Examiner. Our concerns have to deal with protecting the integrity of the investigation process particularly in cases where there is evidence of a crime being involved. The amendments, adequately this concern.

Francis Auld, Confederated Salish and Kootenai Tribes, gave written testimony in favor of HB #131. EXHIBIT 6

Carl Fourstar, Cultural Liaison, gave written testimony in favor of HB #131. EXHIBIT 7

Jermaine Montier, stated Indian people have been here thousands and thousands of years. We are only asking for you to provide the sanctity and dignity of our ancestors' graves. We hold these graves in the same regard as you do your grandparents' graves.

Nadia Lefthand, Confederated Salish and Kootenai Tribes, gave written testimony in favor of HB #131. EXHIBIT 8

Dave Schwabb, State Archeologist, stated there are many states that have enacted similar legislation to protect unmarked graves. The vast majority of unmarked and unregistered graves in Montana that are encountered are historic people. The concept of confidentiality is an issue. Under Federal Law information concerning location of cultural resources are exempt from public disclosure. That is a good law and we do have this as a guideline. This is to insure protection of preservation of these sources. I believe it would be a travesty of justice for Montana not to have some form of burial protection legislation in place during 1991 which marks the 500th anniversary of Christopher Columbus discovering America.

T. Weber Greiser, President, Montana Archaeological Association, gave written testimony in favor of HB #131. EXHIBIT 9

Edrie Vinson, Supervisor Environmental Section - Department of Highways, gave written testimony in favor of HB #131. EXHIBIT 10

Little Weasel, Medicine Man for Kootenai Tribe, began his introduction in his native language. He then stated the people he represents are asking support of this bill to afford them the dignity and respect that any human remains should receive. The respect and dignity of our people has been handed down to my people for many years. We are taught the respect for our dead ancestors. We have worked together with the other tribes in Montana, the archaeologists, and the coroner's office, to come up with legislation that we agree with.

Dave Nelson, stated his support of this bill hopes the committee would consider the issue of permanent funding.

Kathleen Fleurry, stated she urged the passing of the bill. All tribes in Montana do expect passage of this bill.

Lance Foster, student, stated he was in favor of the passage of this bill. The tribes deserve the respect of preserving their ancestors' graves.

Bill Tall Bull, stated he is in support of this bill. I have reburied many of my ancestors. Anytime I am called on to do this, I was ready to do my best. I think this bill makes people aware we have obligations to protect the graves.

Opponents' Testimony: none

Questions From Committee Members:

REP. MEASURE asked Paul Johnson what are the penalties for disturbing by an individual, accidentally or on purpose? Mr. Johnson stated no penalty for an accidental disturbance now. If there is an intentional disturbance without the involvement of the coroner, it is a 6 month, \$500 misdemeanor.

REP. MESSMORE asked REP. BROOKE if she believes the \$5000 funding is adequate for board meetings and does this board require a staff member? REP. BROOKE said the bill proposes we are to be put on the list on Cultural and Aesthetic Grant Proposals. I don't think it would need to have a fiscal note. I have not been told that there would be a staff member required for the board. The board covers their own expenses. REP. MESSMORE asked what department would this board respond to? REP. BROOKE said the board would be under the Department of Commerce.

REP. JOHNSON asked Ms. Atkinson during the time of the construction of the bill, was the funding consideration taken under advisement? If there is no funding, even the passage of the bill doesn't get done what you want it to. Ms. Atkinson stated they were looking for funds for the initial start-up. We don't envision the board will meet regularly. We also have a provision in the bill that allows for the board to seek funds or accept gifts. REP. JOHNSON stated there are a number of places in the bill that require funding. If the committee decided to take it out of the funding sources and put it here, would you be in agreement with that. Ms. Atkinson said she would have to speak with the other tribes.

REP. RICE asked REP. BROOKE if other states setting up their statutes stating it is a felony to let out information of where a burial site is located? David Schwab said yes other states charge these people with a felony. There is a group of people who do this constantly and that is why the offense goes in terms of the violation of the crime.

Closing by Sponsor:

REP. BROOKE stated she was honored to be the sponsor of this bill. She would urge you to take a close look at this bill. Rep. Brooke said she would be able to clarify the amendments when the bill is considered in Executive Session.

HEARING ON HB #173 REVISE PROCEDURES OF JUDICIAL STANDARDS COMMISSION

Presentation and Opening Statement by Sponsor:

REP. PAVLOVICH, HOUSE DISTRICT 70, stated; "This is basically a clean up bill and I will let Judge Sullivan give you the specifics as to what the bill says."

Proponents' Testimony:

Judge Sullivan, Butte, stated he had been elected by the other judges to come today and explain this bill we are supporting.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE

Jan. 22, 1991

NAME

PRESENT

ABSENT

EXCUSED

REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/	<i>xxx</i>	
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/	<i>xxx</i>	
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

EXHIBIT 3
DATE 1-22-91
HB 131

TESTIMONY ON HB 131
Human Skeletal Remains and Burial Site Protection Act
Sponsored by Vivian Brooke

House Judiciary Committee
January 22, 1991
8:00 AM - Rm. 312-2

Mr. Chairman, Members of the Committee:

I am Gloria Hermanson. I reside in Helena. I represent the Montana Cultural Advocacy, a broad cross-section of Montanans committed to the development of our state's cultural resources.

I stand as a proponent to HB 131 with the exception of its proposed funding. Cultural and Aesthetics grant monies are awarded to cultural and aesthetics "projects" that go through a process of review, recommendation, and approval that involves a statewide committee review of every proposal with recommendations to the Legislature for funding. The Long-Range Planning Committee then reviews recommended projects for final funding proposal to Appropriations. Evaluation criteria include quality of project, cultural impact of project, cost factors, geographical diversity, cultural diversity, project diversity, and cost diversity. For this coming biennium, projected available dollars for both projects and administration are \$1,397,437. Proposal funding requests totalled \$3,638,854. There is no extra money in C & A.

We agree with the basic intent of this bill, but it should be funded from the State's general fund, not through cultural and aesthetics.

An amendment to that effect has been drawn up and will be presented to you later in the hearing.

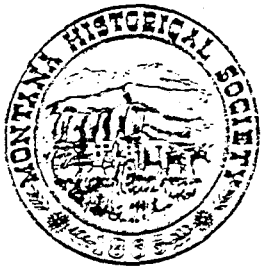


EXHIBIT 4
DATE 1-22-91
HB 131

MONTANA HISTORICAL SOCIETY

225 NORTH ROBERTS STREET • (406) 444-2694 • HELENA, MONTANA 59620-9990

January 21, 1991

Representative Vivian Brooke
Montana House of Representatives
Capitol

Dear Representative Brooke:

The Montana Historical Society is pleased to support HB 131. This bill addresses two very critical needs: it establishes penalties for vandalism of burial sites not in cemeteries, and it establishes a procedure for determining how to treat burials outside cemeteries that are inadvertently disturbed.

Such bills have been on the dockets of legislatures nationwide. The need is well established: for far too long we have treated scattered burials at best haphazardly and often very callously.

The Montana Historical Society supports this bill for a number of reasons:

--It is simple and understandable. We have seen examples of burial bills that do not solve the problems because the time periods and number of groups involved are so great that the end result is confusion, not resolution.

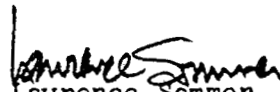
--It leaves the right people involved at the right time. Coroners continue to play the critical role they now play--determining whether a burial is recent or potentially related to a crime. If a coroner so determines that, his call prevails and no other procedures are set in motion. If a burial has antiquity, disposition of it falls under the direction of a simple, straightforwardly comprised Board. This bill offers methods to resolve decisions about burials quickly. Since most of our random burials are Native American in origin, Board composition reflects that. But Board procedures offer a clear avenue for interaction among archaeologists and people representing different historical backgrounds. It creates no new power roles or bureaucracies.

--House Bill 131 has evolved from 2 years of concentrated consultation among tribes, archaeologists, coroners, and agency personnel. We have been impressed with the consensus building that has occurred over the last two years.

DATE 1-22-91
HB 131

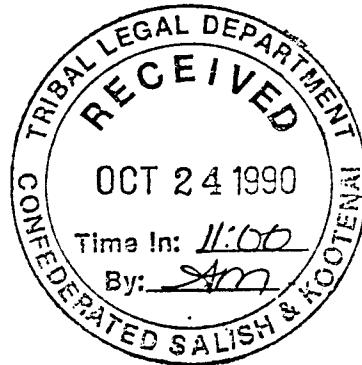
The Montana Historical Society urges passage of House Bill 131 as a distinctive, workable Montana solution to a nationwide need.

Sincerely,


Lawrence Sommer
Director

LS/db

EXHIBIT 5
DATE 1-22-91
HB 121



October 22, 1990

Karen J. Atkinson
Tribal Attorney
Salish & Kootenai Tribes
P.O. Box 278
Pablo, MT 59855

RE: Montana Burial Legislation and Repatriation

Dear Ms. Atkinson:

I have reviewed the contents of the Montana Burial Bill and I cannot add anything to it because it is pretty well written.

Your memorandum specifically states you are going to shoot it to the Montana State Legislature. If the repatriation sections of the federal bill does not pass in Congress, this is also a good move.

The human skeletal remains and burials are most sacred, especially to my Tribe. We have to have some kind of protection, whether it is federal or state.

Repatriation is most important to all Indians in this state and if it has to be a separate bill, let's do it this way to satisfy our Indian people.

With best regards,


Patrick Chief Stick, Sr.

EXHIBIT 6
DATE 1-22-91
HB 131

SUPPORT OF H.B. 131

KISUK KIWUKYIT HU INNI AKSMAKNIK WIYSIYAE. HU INNI HUPAK NA AQANKMI.

Greetings my name in English is Francis Auld, I'm Kootenai Indian and a member of the Confederated Salish and Kootenai Tribes. I want to voice my support for the "burial bill". Throughout history very little respect has been shown to the Indian people in general as to burials.

This law would give me some hope that someday that my children won't have to fight to keep me buried. Or they don't have to worry about having their bones dug-up.

I was taught in a manner that everything we do has a reflection in our afterlife. And this can start to put the past that was disturbed back into a harmonious balance with what we Indians believe in.

I'm sure that anyone opposing this if they were to take a walk through the Arlington National Cemetery and the next day heard that some team of archeologist were about to dig-up the remains of those buried there would have some emotional reaction.

I hope and pray that this will start a good balancing that the bones of my ancestors will be respected in the manner of those that lay in eternal rest such as in Arlington National Cemetery.

FORT PECK TRIBES

WATER RESOURCE OFFICE
Management and Development

January 18, 1991

EXHIBIT 7
DATE 1-22-91
HB 131

To Whom It May Concern,

The following comments are intended as support for the enactment of House Bill 131, "Human Skeletal Remains and Burial Site Protection Act".

These comments are made after consulting with Tribal Elders, Spiritual Leaders and members of the Tribal Executive Board.

The language of the Bill, as well as intent, is well received by the Fort Peck Tribes.

We feel that the needs of the development interests are properly addressed as well as the concerns of Native Americans and other Ethnic groups.

Enactment of this Bill will go a long way toward enabling the people of Montana to move forward together instead of dwelling on concerns of past differences.

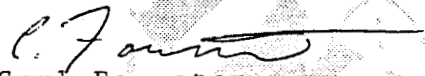

Carl Fourstar
Cultural Liaison

EXHIBIT 8
DATE 1-22-91
HB 131

Statement of Naida Lefthand

Confederated Salish and Kootenai Tribes

Ki suk Wiñnam

Good Morning

I am Naida Lefthand in the English language. I work for the Confederated Salish and Kootenai Tribes in the Kootenai Culture Program. I am here today representing the Kootenai people. We are in support of H.B. 131 the proposed burial bill which would provide protection to unmarked Indian burials within the State of Montana.

The Kootenai Culture Program is responsible for preserving, protecting, perpetuating, and enhancing the culture, language, and traditions of the Kootenai people. We do this in many ways, but we also encounter many problems. One of the biggest problems which causes us great distress and concern is the desecration of our ancestral burial grounds.

Before the coming of the non-Indians, my people had vast territorial boundaries. Whenever a death occurred, the Kootenai would bury the individual within the area of where the people camped at that time. As a result, graves of my people are found throughout Montana and Indian country. The passage of this bill would protect those burials wherever they are found. This bill would assure that the old unmarked graves of my people would be treated respectfully and with dignity.

Ex. 8

1-22-91

HB 131

Too often my people have been treated as if they were not human. Their remains have been dug up in the name of science. These bones and burial material were studied, stored, or displayed in museums and universities with out permission. Scientists wanted to know what my people ate, how they lived, how long my people have been here. Much of the knowledge sought by these scientists is known by my living elders today. The creation of my people and their continuing life styles are part of the oral history that has been handed down generation to generation by the Kootenai people.

This bill would assure that Kootenai remains or burial materials are no longer appropriated and put into museums, universities, or private collections without the voluntary consent of the Kootenai people, those who hold the living memory of their ancestors. This bill was drafted with cooperation among tribes, state agencies, and scientists. Passage of this bill would bring about continued cooperation to assure that all human remains burials are treated equally and with dignity and respect. This not only protects the sanctity of the burial site itself but also protects the physical, emotional, and spiritual well-being of Kootenai people living today. We urge you to pass this bill. This will reinforce our pride as Kootenai people, the first inhabitants of this beautiful land.

**STATEMENT OF THE MONTANA ARCHAEOLOGICAL ASSOCIATION
IN SUPPORT OF HOUSE BILL 131**

The Montana Archaeological Association (MAA) is a voluntary association that promotes and supports the goals of professional archaeology in the State of Montana. The goals of the MAA include working for the preservation and conservation of the prehistoric and historic heritage of the State. The membership consists of people with degrees in archaeology, cultural anthropology and history who are actively engaged in, or have been engaged in, professional archaeology in Montana.

The Montana Archaeological Association established a committee in the Spring of 1989 to work with representatives of Montana's Indian Tribes to prepare a bill for the protection of human skeletal remains and burial sites located in Montana. The bill before you is the result of the cooperative efforts of the Tribes, the MAA committee and the MAA membership.

The Montana Archaeological Association feels that House Bill 131 will fill a major gap in Montana cemetery or marked burial statutes which do not include unmarked graves or burial grounds. The U.S. Government has recently passed legislation covering such sites on Federal lands. H.B.131 also provides for protection of all burial sites and cemeteries through penalties. At the same time the bill provides a procedure for scientific study of burials.

A recent poll of the Montana Archaeological Association Executive Committee resulted in unanimous support for House Bill 131. The MAA feels that as professionals we can conduct archaeological research in Montana under this bill. Therefore, as representative of the MAA, I am here today to speak in favor of House Bill 131.

T. Weber Greiser
President
Montana Archaeological Association

DEPARTMENT OF HIGHWAYS

EXHIBIT 10
DATE 1-22-91
HB 131

STAN STEPHENS, GOVERNOR

2701 PROSPECT AVE

STATE OF MONTANA

HELENA, MONTANA 59620



January 21, 1991

Testimony

Before the House Judiciary Committee
HB 131 "The Human Skeletal Remains
and Burial Site Protection Act"

Over the past two years, the department has studied the issues, reviewed similar legislation from other states, and has worked with representatives of other state agencies, the Indian tribes, and the Montana Archaeological Association in drafting this legislation. We have no objection to its passage.

This bill has been revised to provide timeframes within which review must occur when remains are inadvertently discovered during construction projects. It is clear that the responsible authorities have to act quickly. The department can operate within those time constraints.

Last session the department requested time to determine whether this bill would conflict with other obligations or requirements it had as a result of its receiving federal funding for highway construction projects. In the past, a burial would have been treated as an archaeological site, and the department would have been required to comply with the National Historic Preservation Act in dealing with it. A previous version of this bill stated clearly that human remains were not archaeological artifacts. We would like the intent of the legislation to be as specific as possible so as not to have a conflict in requirements, and we would appreciate the written assurance of the SHPO that burials will not be considered "historic properties," which we believe would be in conflict with the bill.

Edrie Vinson

Edrie L. Vinson, Supervisor
Environmental Section

ELV:D:ENV:27.mb

cc: D. S. Johnson
C. S. Peil

G. L. Larson
J. R. Beck

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. 131
DATE Jan 22 SPONSOR(S) Rep Brooke

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Edrie Vinson	Dept Highways		
ILron Atkinson	CS+KT	✓	
Charley A Patten		✓	
Tammy Lynn Williams Helen		✓	
Hatto Steele		✓	
Bill TALLBULL	Northern Cheyenne Tribe	✓	
Curly Bear Warner	Blackfoot	✓	
Nicol Price	med wheel allians	✓	
David Schwab	Montana SHPO		
David Nelson	MT Anti Council	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 1, 1991,
at 7:39 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB 289

Motion: REP. BROWN MOVED HB 289 DO PASS.

Discussion: REP. MEASURE felt the committee should not raise the
filing fee to \$100 because most couples wanting an uncontested
divorce are very young and probably made a rash decision to get
married in the first place. REP. MEASURE stated that easy
divorces shouldn't be discouraged by adding an extra \$40 to the
filing fee just for uniformity.

Motion/Vote: REP. MEASURE moved to amend HB 289 by retaining the
fee of \$60. Motion carried.

and highly extreme communication that they themselves are supposed to prevent? Ms. Van Valkenburg stated she felt they would be liable. If a school administrator has that function to be reviewing with the possibility of changing it then they should have the liability upon them.

REP. WHALEN asked Ms. Frankino Doggett what the applicability is to a private religious school and how she sees the reaction to Montana's Constitutional Provisions related to Free Exercise of Religion? Ms. Frankino Doggett said that this bill says a student "in a public school", which makes the bill specifically apply to public school issues.

Closing by Sponsor:

REP. COHEN stated that he was concerned about the liability issue also. He felt the bill should be looked over closely and the committee should decide what is reasonable and what is not.

EXECUTIVE ACTION ON HB 131

Motion: REP. BROOKE MOVED HB 131 DO PASS.

Discussion:

REP. BROOKE handed the committee a gray bill that was agreed upon by the sub-committee. EXHIBIT 14. The first amendment deals with the funding source. Sections 13, 14 and 15 deals with the concept of funding. The amendment set outs a special revenue fund of \$10,000 for two years and thereafter, the fees, grants and donations would then fund the work of the board through the rest of its existence. These fees, grants and donations would be put in that account just for that purpose.

Motion/Vote: REP. BROOKE moved to amend HB 131 with the funding amendment previously discussed. Motion carried unanimously.

Discussion:

REP. BROOKE stated that on page 6, there is reference under subsection 7 of who is to gain control of the Human Skeletal Remains and the priority order in which they gain control. In that wording, the sub-committee used the term "Cultural Group" and adopted a definition of cultural group which is at the end of section. The language was taken from suggested language from Federal Legislation.

Motion/Vote: REP. BROOKE moved to amend HB 131 with the amendment previously discussed regarding who gains control of the

Human Skeletal Remains. Motion carried unanimously.

Discussion:

REP. BROOKE stated that the next amendment is on page 8 dealing with definition of cultural group. She asked John MacMaster to explain the amendment to the committee.

John MacMaster stated that the committee should read the two offered subsections on page 8 and decide which subsection is more agreeable to them. The one on the bottom is the Boharski amendment and the one above is the sub-committees choice.

Motion: REP. TOOLE moved to amend HB 131 with the sub-committee version of subsection c.

Discussion:

REP. TOOLE stated that it will be easier to prove the sub-committees version than the Boharski version of c. The prosecution is going to have to prove, in Boharski's version, that the person's specifically intended to cause, by disclosing information, someone to disturb the site. That kind of intent is very difficult to prove. The sub-committee version makes it easier to prove.

REP. MEASURE stated that even though the sub-committees alternative c is easier to prove the committee has to look at the fact that it is an attempt at a crime in Rep. Boharski's version. Whereas, the subcommittees version there is only a conveyance of knowledge. The problem with the subcommittee version is that it is unconstitutional.

Motion: REP. MEASURE MADE A SUBSTITUTE MOTION to amend HB 131 with the Boharski version of c.

Discussion:

REP. RICE stated that he supported the motion on the sub-committee but hearing the discussion he support Rep. Measure's motion.

REP. TOOLE stated that there are very few criminal cases that require specific intent to prove the ultimate destruction or damage. It is usually the case that knowledge that such an occurrence is likely to occur is sufficient. "If we use the Boharski version we will render this a superfluous thing and won't be used to prosecute."

Vote: Motion failed 9 to 10. EXHIBIT 15

Motion/Vote: REP. TOOLE moved to amend HB 131 with the sub-committees version of c. Motion failed.

Motion: REP. GOULD MOVED TO REVERSE THE VOTE.

CHAIRMAN STRIZICH stated that without objection we will reverse the votes. The motion will pass by the same vote.

Discussion:

REP. BROOKE stated that the next amendment deals with the penalty. The sub-committee decided that there are three violations for this prohibited act. They are under section 8 starting on page 7 and continues onto page 8. The sub-committee has adopted a formula for the penalties for the violation of a, b, and c. On subsection 2 the sub-committee has the penalty for the provision of 1a. That is a fine in the amount of \$1,000 and be imprisoned in the county jail for not more than 6 months or both. The sub-committee felt this was a misdemeanor. A subsequent violation of 1a would be a fine in the amount not to exceed \$20,000 and imprisonment for not more than 5 years, or both. Subsection c is the most prohibited act and the penalty for this act would be a fine in the amount not to exceed \$50,000 and be imprisoned for not more than 20 years. The penalty for 1c is a fine in the amount not to exceed \$500 and be imprisoned for not more than 6 months or both. The subsequent section would be a fine in the amount not to exceed \$10,000 and be imprisoned for not more than 5 years.

Motion: REP. BROOKE moved to amend HB 131 with the penalty provisions discussed previously.

Discussion:

REP. TOOLE stated that sub-committee tried to follow the scheme that is generally followed in the Criminal Code. The fines are not out of line with what we already have in law.

REP. RICE stated that he agrees with the entire provisions the sub-committee set up except for sub 3 on page 8. It now allows maximum imprisonment at 20 years and the bill as originally written was 5 years. "I think that increase from 5 to 20 years is excessive. It is my suggestion that we make that 10 years instead of 20."

Motion: REP. RICE MADE A SUBSTITUTE MOTION to amend HB 131 to change the prison sentence to 10 years instead of 20 along with the entire section dealing with penalties.

Discussion:

REP. TOOLE stated that there were several people assisting in the sub-committee. This particular offense, unlike the others, permits the commercial use of remains. This is an act which the committee felt would be a clearly, knowing, and intentional violation of the existing law with serious implications. People usually only serve a moderate amount of their prison sentence,

most of the time, and 20 years is not excessive for this type of crime.

REP. BROOKE stated that some of the people that helped the sub-committee determine this balance also felt a short sentence does not prevent a person from keeping his/her contacts on the outside and continues the business of commercial use.

Vote: Motion carried 10 to 9. EXHIBIT 16

Discussion:

REP. BROOKE stated the next amendment deals with the open meeting law in section 10 on page 9. The original bill had section 2-3-203 amended to exempt this board from the regulation of the open meeting law. The sub-committee voted and approved that section of law would be deleted from being amended. The language would be included to clarify that the board by close part of their meetings when a specific cite is going to be discussed.

Motion: REP. BROOKE moved to amend HB 131 to allow the board to have closed meetings.

Discussion:

REP. MEASURE stated that the right of privacy is important and well deserved and he endorses the amendment.

Vote: Motion carried.

Discussion:

REP. BROOKE stated that the next amendment deals with the representation of the board. There was some clarification on page 3, regarding the composition. In section 4, subsection a, the amendment clarifies that the Governor will appoint, from each of the seven reservations from the list of up to 3 nominees supplied by each of the respective tribal governments.

Motion/Vote: REP. BROOKE moved to amend HB 131 to clarify how the board will be selected. Motion carried unanimously.

Discussion:

REP. BROOKE stated that the next amendment clarifies when the board will receive notification as to what they would do within 36 hours. Without the language, people were unclear as to when the 36 hours would begin.

Motion/Vote: REP. BROOKE moved to amend HB 131 with additional language "after the board receives notification" on page 5, subsection 6 at the bottom of the page. Motion carried unanimously.

Discussion: John MacMaster stated that there is language referring to cemeteries and graveyards. This language makes it clear that this bill does not apply to burials in cemeteries or graveyards. The bill is also designed to mainly cover Indian remains. He stated that there is also an amendment recognizing the need of forensic examination by a coroner and examination by other law enforcement personnel under title 46. These are most of the clean-up amendments.

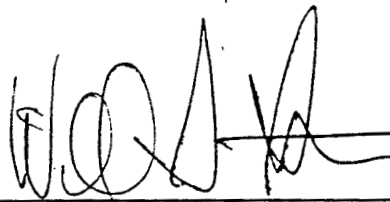
Motion/Vote: REP. BROOKE moved to amend HB 131 with the clean-up amendments. Motion carried.

Motion/Vote: REP. BROOKE MOVED HB 131 DO PASS AS AMENDED.
Motion carried unanimously.

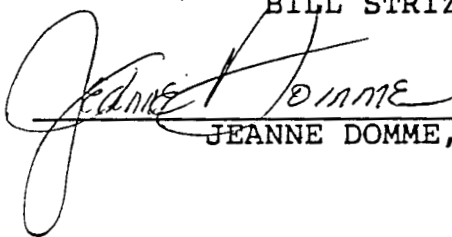
Motion/Vote: REP. DARKO moved to strike everything after the enacting clause and substitute the appropriate language from the gray bill. Motion carried unanimously.

ADJOURNMENT

Adjournment: 12:03 p.m.



BILL STRIZICH, Chair



JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE Feb 1, 1991

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/	xx	
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/	aa	
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/	aa	
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/	aa	
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

Joanne Alonzo *2-5-91 1:25 PM BOH*
HOUSE STANDING COMMITTEE REPORT

February 5, 1991

Page 1 of 11

Mr. Speaker: We, the committee on Judiciary report that House Bill 131 (first reading copy -- white) do pass as amended.

Signed: *Bill Strizich*

Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 4.
Following: "ENTITLED:"
Insert: "AN ACT CREATING"
2. Title, page 1, line 11.
Following: "GRANTS,"
Insert: "AND"
Following: "DONATIONS"
Strike: ", AND PENALTIES"
Following: "EXEMPTING"
Insert: "PARTS OF"
3. Title, line 12.
Following: "LAWS"
Insert: "UNDER CERTAIN CONDITIONS"
4. Title, line 13.
Following: "AUTHORITY;"
Insert: "PROVIDING FOR A 2-YEAR STATUTORY APPROPRIATION;"
5. Title, lines 14 and 15.
Strike: "CULTURAL AND AESTHETIC PROJECTS ACCOUNT"
Insert: "GENERAL FUND"
Following: "SECTIONS"
Strike: "2-3-203,"
Following: "2-6-101,"
Strike: "AND"
Following: "2-6-102,"
Insert: "AND 17-7-502,"
6. Title, line 16.
Following: "DATES"
Insert: "AND A TERMINATION DATE"
7. Page 1, line 20.

Strike: "protection"
Insert: "preservation"

8. Page 2, line 10 through page 17, line 13.
Strike: everything following the enacting clause
Insert:

"NEW SECTION. Section 1. Short title. [Sections 1 through 10 and 13] may be cited as the "Human Skeletal Remains and Burial Site Protection Act".

NEW SECTION. Section 2. Legislative findings and intent.

(1) The legislature of the state of Montana finds that:

(a) the state and its citizens have an obligation to protect from disturbance or destruction all human skeletal remains, burial sites, and burial material, including those in marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds located on state or private lands that are not protected as cemeteries or graveyards under existing state law;

(b) marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds not protected as cemeteries or graveyards under existing state law are increasingly subject to pilferage, disturbance, and destruction for commercial purposes, including land development, agriculture, mining, and the sale of artifacts;

(c) private collection of artifacts may result in the destruction of burial sites. Existing law reflects the value society places on preserving human burial sites, but the law does not clearly provide equal and adequate protection or incentives to ensure preservation and protection of all burial sites in the state regardless of ethnic origin, burial context, or age.

(d) while some human skeletal remains and burial sites may be of interest to science, the needs of the scientific community to gather information and material from burial sites must be balanced with the legal, moral, and religious rights and obligations of tribal groups, next of kin, or descendants;

(e) preservation in place is the preferred policy for all human skeletal remains, burial sites, and burial material; and

(f) notwithstanding any other provision of law, [sections 1 through 10 and 13] are the exclusive laws governing the treatment of human skeletal remains, burial sites, and burial materials.

(2) It is the intent of the legislature to:

(a) ensure that all burials be accorded equal treatment and respect for human dignity without reference to ethnic origin, cultural background, or religious affiliation;

(b) provide adequate protection for all interests related to any burial site encountered during archaeological excavation or agricultural, mining, construction, or other ground-disturbing

activity on state and private lands without causing avoidable or undue delay or hardship for any person who has an interest in using the land on which the burial site is located;

(c) recognize the interests, concerns, and obligations of those having a kinship, tribal, cultural, or religious affiliation with the burial site and balance those interests against the interests of scientists, landowners, and developers;

(d) provide to the board an exemption from the open meeting and public records laws when public disclosure of the location of a burial site could result in pilferage, disturbance, or destruction of the site; and

(e) recognize the need for forensic examination of human skeletal remains, burial sites, and burial material if the county coroner, county attorney, or state medical examiner determines an examination is necessary under state law.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 10 and 13], the following definitions apply:

(1) "Board" means the burial preservation board established in [section 4].

(2) "Burial material" means any item found at the burial site or with the human skeletal remains and directly associated with the burial or burial site.

(3) "Burial site" means, except for cemeteries and graveyards protected under existing state law, any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were intentionally deposited as a part of the death rites or ceremonies of a culture.

(4) "Human skeletal remains" means any part of the human body in any state of decomposition taken from a burial site.

(5) "Marked, unmarked, unrecorded, registered, or unregistered grave or burial ground" means any place, except a cemetery or graveyard protected under existing state law, where human skeletal remains are or have been interred.

(6) "Scientifically justifiable" means that the human skeletal remains or burial material has a potential to address specific research questions in the science of anthropology, history, or biology.

(7) "Tribal group" means an Indian tribe recognized by the United States secretary of the interior or recognized as a tribe by other Indian nations.

NEW SECTION. Section 4. Board -- composition -- rights -- responsibilities. (1) There is a burial preservation board. The board is composed of:

(a) one representative of each of the seven reservations, appointed by the governor from a list of up to three nominees

provided by each of the respective tribal governments;

(b) one person appointed by the governor from a list of up to three nominees submitted the Little Shell band of Chippewa Indians;

(c) one person appointed by the Montana state historic preservation officer;

(d) one representative of the Montana archaeological association appointed by the coordinator of Indian affairs from a list of up to three nominees submitted by the Montana archaeological association;

(e) one physical anthropologist appointed by the state medical examiner;

(f) one representative of the Montana coroners' association appointed by the coordinator of Indian affairs from a list of up to three nominees submitted by the Montana coroners' association; and

(g) one representative of the public, appointed by the attorney general, who is not associated with tribal governments; state government; the fields of historic preservation, archaeology, or anthropology; or the Montana coroners' association.

(2) Members of the board shall serve staggered 2-year terms. A vacancy on the board must be filled in the same manner as the original appointment and only for the unexpired portion of the term.

(3) The board shall:

(a) provide for the establishment and maintenance of a registry of burial sites located in the state;

(b) designate the appropriate member or members of the board or a representative or representatives of the board to conduct a field review upon notification of the discovery of human skeletal remains, a burial site, or burial materials;

(c) assist interested landowners in the development of agreements with the board for the treatment and disposition, with appropriate dignity, of human skeletal remains and burial material;

(d) mediate, upon application of either party, disputes that may arise between a landowner and known descendants that relate to the treatment and disposition of human skeletal remains and burial material;

(e) assume responsibility for final treatment and disposition of human skeletal remains and burial material if the field review recommendation is not accepted by the board's representatives and the landowner;

(f) establish a nonrefundable application fee, not to exceed \$50, for a permit for scientific analysis of human skeletal remains or burial material from burial sites as provided by [section 6];

(g) issue permits authorizing scientific analysis;

(h) accept grants or real or in-kind donations to carry out the purposes of [sections 1 through 10 and 13];

(i) adopt rules necessary to administer and enforce the provisions of [sections 1 through 10 and 13]; and

(j) perform any other duties necessary to implement the provisions of [sections 1 through 10 and 13].

(4) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(5) Members of the board shall serve without pay but are entitled to reimbursement for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503.

NEW SECTION. Section 5. Discovery -- reporting requirements -- field review. (1) A person who by archaeological excavation or by agricultural, mining, construction, or other ground-disturbing activity discovers human skeletal remains, a burial site, or burial material shall immediately notify the county coroner. Failure to notify the county coroner subjects a person to the penalty provided in [section 8].

(2) Upon discovery of human skeletal remains, a burial site, or burial material, excavation or further disturbance must cease until the coroner has determined whether the remains are subject to the provisions of Title 46, chapter 4, or any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death or whether a forensic examination of the human skeletal remains, burial site, or burial material is necessary. The coroner shall make his determination within 2 working days from the time the person responsible for the excavation notifies him of the discovery or recognition of the remains. If the coroner cannot make the determination within 2 working days, he shall notify a member of the board of the reason for and the approximate length of the delay. The coroner shall take all reasonable steps to make his determination without removing or causing further disturbance of the remains.

(3) If a forensic examination, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death is necessary and yields evidence of criminal activity, the evidence may be seized by the coroner or law enforcement agency with jurisdiction for use in a criminal proceeding as provided by law.

(4) If the coroner determines that the remains are not subject to the provisions of Title 46, chapter 4, or any other provisions of law concerning the investigation of the circumstances, manner, and cause of death and that a forensic examination is not necessary, he shall telephone the state historic preservation officer within 24 hours. Within 24 hours of notification, the state historic preservation officer shall contact either the landowner and the board or the landowner and

the board member representing the nearest reservation and notify them of the discovery of human skeletal remains, a burial site, or burial material.

(5) If the state historic preservation officer cannot be contacted, the coroner shall notify a member of the board or the law enforcement agency of the nearest reservation within 24 hours. The board or the agency shall immediately notify the landowner and the board member representing that reservation.

(6) Within 36 hours after the board receives notification of a discovery of human skeletal remains, a burial site, or burial material, the board shall designate representatives to conduct, with the permission of the landowner, an initial field review. If the field review cannot be completed within the next 36 hours, the board's representatives shall negotiate with the landowner or his representative for a reasonable time extension to complete the review. The field review must include:

- (a) a determination of whether the site can be preserved;
- (b) negotiation with the landowner concerning onsite reburial or disinterment and reburial; and
- (c) a recommendation, including a timeframe, concerning final treatment or disposition of the human skeletal remains or burial material.

(7) If the board's representatives fail to make a recommendation or if the landowner and the board cannot agree and mediation fails to provide a resolution acceptable to the landowner and the board, control of human skeletal remains or burial materials is vested in the board and the board shall give control of the remains or materials in the following priority to:

- (a) the descendants, if identifiable;
- (b) the tribe or other cultural group that has the closest cultural affiliation with the human skeletal remains or burial materials;
- (c) the tribe or other cultural group recognized as having aboriginally or historically occupied the area where the remains or materials were discovered if, upon notification by the board, the tribe or cultural group states a claim for the remains or materials; or

(d) if unclaimed by any tribe or cultural group, the board, which shall determine the appropriate disposition and oversee the reinterment of the remains and materials.

(8) For purposes of this section, "cultural group" means a present-day group or organization that has a relationship of shared group identity which can be reasonably traced historically or prehistorically to an identifiable earlier group or organization.

NEW SECTION. Section 6. Scientific analysis -- permit required. (1) Although onsite reburial is preferred, the board may, upon petition by a person seeking permission to perform

scientific analysis, grant a permit for the scientific removal and analysis of human skeletal remains and burial material upon proof and determination by the board that the analysis is scientifically justifiable. A petition for a permit must include:

(a) payment of the nonrefundable application fee provided for in [section 4]; and

(b) a brief narrative describing the methodology to be used, the timeframe needed to complete the scientific study, and any other information specifically requested by the board relating to the proposed study.

(2) The methodology proposed must be reviewed by the state historic preservation officer or his designated representative and the physical anthropologist on the board, and a recommendation must be made to the full board. Once approved by the board, any change in methodology or in the timeframe must be approved by the board before the original timeframe expires. The timeframe for scientific study may not exceed 12 months from the date of issuance of the permit.

(3) A permit for scientific analysis issued by the board is subject to terms, conditions, and procedures prescribed by the board and must include the condition that a permittee shall pay all costs of excavation, study, and disposition.

(4) The board shall either issue or deny a permit within 30 working days from the date of the permit petition. If the board denies a permit upon a finding that scientific analysis is not justifiable, the board shall provide the applicant with a written statement outlining the grounds for its finding. The applicant may appeal the decision of the board under the provisions of Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(5) The board may suspend or revoke a permit pursuant to the Montana Administrative Procedure Act upon a finding that the permittee has violated any provision of [sections 1 through 10 and 13] or any term, condition, or procedure of a permit issued by the board.

(6) The provisions of this section do not apply to a forensic examination by the county coroner, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death.

NEW SECTION. Section 7. Nondisclosure of records. (1) The state historic preservation officer, in consultation with the board, shall maintain burial site records that are separate and distinct from those in the cultural resource registry and that are necessary to administer [sections 1 through 10 and 13].

(2) Burial site records are confidential and available only to criminal justice agencies or to federal, state, and tribal personnel or their appointed representatives legally charged with

administering laws protecting cultural resources.

(3) Statistical information compiled from burial site records must be made available to the general public. Any information concerning burial site records that is released to a criminal justice agency is confidential criminal justice information, as defined in 44-5-103, and is subject to dissemination pursuant to 44-5-303.

NEW SECTION. Section 8. Prohibited acts -- penalties. (1) After July 1, 1991, unless authorized under [sections 1 through 10 and 13] or by the descendants, tribe, cultural group, or other person, group, or entity to which the board gives control of the human skeletal remains or burial materials under [section 5], a person may not:

(a) purposely or knowingly pilfer, disturb, destroy, or permit pilferage, disturbance, or destruction of a marked, unmarked, unrecorded, registered, or unregistered grave or burial ground or of burial material;

(b) for commercial use, knowingly possess, buy, sell, transport, barter, or display human skeletal remains or burial material acquired in violation of [sections 1 through 10 and 13]; or

(c) purposely or knowingly disclose information knowing that it is highly probable that the disclosure will lead to pilferage, disturbance, or destruction of a burial site.

(2) A person convicted under the provisions of subsection (1)(a) may be fined an amount not to exceed \$1,000, be imprisoned in the county jail for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(a) may be fined an amount not to exceed \$20,000, be imprisoned for not more than 5 years, or both.

(3) A person convicted under the provisions of subsection (1)(b) may be fined an amount not to exceed \$50,000, be imprisoned for not more than 20 years, or both.

(4) A person convicted under the provisions of subsection (1)(c) may be fined an amount not to exceed \$500, be imprisoned for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(c) may be fined an amount not to exceed \$10,000, be imprisoned for not more than 5 years, or both.

(4) A person who knowingly fails to give notice as required by [section 5(1)] may be fined an amount not less than \$100 or more than \$500.

(5) A person who violates a provision of this section or any term or condition of a permit issued under [section 6] is subject to a civil penalty not to exceed \$2,000 for the first violation and not to exceed \$10,000 for a subsequent violation.

NEW SECTION. Section 9. Civil penalty and damages

actions. (1) [Sections 1 through 10 and 13] do not preclude civil actions for damages.

(2) The board may bring an action under [section 8] for a civil penalty.

NEW SECTION. Section 10. Closure of board meetings. The board may close part of a meeting of the board to the public if the board finds that information that may be acquired at that part of the meeting may allow a person to identify a burial site, human skeletal remains, or burial material and pilfer, disturb, or destroy the human skeletal remains, burial site, or burial material.

Section 11. Section 2-6-101, MCA, is amended to read:

"2-6-101. Definitions. (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country;

(b) public records, kept in this state, of private writings, except as provided in 22-1-1103 and [section 7].

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings.

(4) All other writings are private."

Section 12. Section 2-6-102, MCA, is amended to read:

"2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-110 or [section 7] and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him on demand a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing."

NEW SECTION. Section 13. Disposition of fees, grants, and donations. (1) There is an account in the state special revenue fund. The board shall deposit any fee, grant, or donation received under [section 4] into the account to be used to pay

expenses for board meetings or expenses incurred in conducting field reviews.

(2) The money in the account is statutorily appropriated to the board as provided in 17-7-502.

Section 14. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) the law containing the statutory authority must be listed in subsection (3).

(b) the law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; [section 13]; and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of montana. Agencies that have entered into agreements authorized by the laws of montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. (In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)"

NEW SECTION. Section 15. Appropriation. There is appropriated \$10,000 from the general fund to the board for the 2 fiscal years beginning July 1, 1991, to be used to pay expenses

for board meetings or expenses incurred in conducting field reviews.

NEW SECTION. Section 16. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 17. Effective dates. (1) [Sections 4, 13, 14, 16, and this section] are effective on passage and approval.

(2) [Sections 1 through 3, and 5 through 12, 15, and 13] are effective July 1, 1991.

NEW SECTION. Section 13. Termination. [Sections 13(2) and 14] terminate on June 30, 1993."

THIS IS A "GRAY BILL". IT WAS DRAFTED ON JANUARY 29 FOR THE SUBCOMMITTEE ON THE BILL AND FOR PURPOSES OF HOUSE JUDICIARY COMMITTEE ACTION ON HB 131. IT SUPERCEDES THE ORIGINAL GRAYBILL THAT WAS DRAFTED ON JANUARY 22 AND PRINTED ON WHITE PAPER. IT IS NOT A FIRST, SECOND, OR THIRD READING COPY OF A BILL, NOR IS IT AN LC DRAFT. THIS GRAYBILL CONTAINS, IN AMENDMENT FORM AND FORMAT, THE SUBCOMMITTEE'S PROPOSED AMENDMENTS, EXCEPT THAT THE AMENDMENTS TO 2-6-101 AND 2-6-102, MCA, WERE IN THE INTRODUCED FIRST READING COPY OF THE BILL. INSERTED SUBCOMMITTEE AMENDMENT MATERIAL IS TYPED IN ALL CAPITAL LETTERS AND UNDERLINED AND MATERIAL THE SUBCOMMITTEE AMENDMENTS DELETE IS STRUCK THROUGH.

HOUSE BILL NO. 131 INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "THE HUMAN SKELETAL REMAINS AND BURIAL SITE PROTECTION ACT; CREATING A BURIAL PRESERVATION BOARD; ESTABLISHING REPORTING AND NOTIFICATION PROCEDURES REGARDING DISTURBANCE OF A BURIAL SITE; PROVIDING FOR FIELD REVIEW AND SCIENTIFIC ANALYSIS; PROVIDING DISINTERMENT AND REINTERMENT PROCEDURES; PROVIDING FOR FEES AND CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR DISPOSITION OF FEES, GRANTS, AND DONATIONS, AND PENALTIES; EXEMPTING MEETINGS FROM THE OPEN MEETING LAWS UNDER CERTAIN CONDITIONS; PROVIDING FOR CONFIDENTIALITY OF RECORDS; GRANTING THE BOARD RULEMAKING AUTHORITY; PROVIDING FOR A TWO-YEAR STATUTORY APPROPRIATION; APPROPRIATING MONEY FROM THE CULTURAL AND AESTHETIC PROJECTS ACCOUNT GENERAL FUND; AMENDING SECTIONS 2-3-203, 2-6-101, AND 2-6-102, AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] grants to the burial protection board rulemaking authority to implement the provisions of this bill. At a minimum, it is the intent of the legislature that the board adopt rules:

- (1) governing the conduct of board business;
- (2) establishing and maintaining a registry of burial sites located in the state;
- (3) establishing criteria for conducting field reviews upon notification of a discovery of human skeletal remains, burial sites, or burial materials; and
- (4) establishing guidelines and forms for the issuance of a

permit for scientific analysis of human remains or burial materials.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. **Short title.** [Sections 1 through 9 10 AND 13] may be cited as the "Human Skeletal Remains and Burial Site Protection Act".

NEW SECTION. Section 2. **Legislative findings and intent.**

(1) The legislature of the state of Montana finds that:

(a) the state and its citizens have an obligation to protect from disturbance or destruction all human skeletal remains, burial sites, and burial material, including those in marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds located on state or private lands THAT ARE NOT PROTECTED AS CEMETERIES OR GRAVEYARDS UNDER EXISTING STATE LAW;

(b) marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds NOT PROTECTED AS CEMETERIES OR GRAVEYARDS UNDER EXISTING STATE LAW are increasingly subject to pilferage, disturbance, and destruction for commercial purposes, including land development, agriculture, mining, and the sale of artifacts;

(c) private collection of artifacts may result in the destruction of burial sites. Existing law reflects the value society places on preserving human burial sites, but the law does not clearly provide equal and adequate protection or incentives to ensure preservation and protection of all burial sites in the state regardless of ethnic origin, burial context, or age.

(d) while some human skeletal remains and burial sites may be of interest to science, the needs of the scientific community to gather information and material from burial sites must be balanced with the legal, moral, and religious rights and obligations of tribal groups, next of kin, or descendants;

(e) preservation in place is the preferred policy for all human skeletal remains, burial sites, and burial material; and

(f) notwithstanding any other provision of law, [sections 1 through 9 10 AND 13] are the exclusive laws governing the treatment of human skeletal remains, burial sites, and burial materials.

(2) It is the intent of the legislature to:

(a) ensure that all burials be accorded equal treatment and respect for human dignity without reference to ethnic origin, cultural background, or religious affiliation;

(b) provide adequate protection for all interests related to any burial site encountered during archaeological excavation or agricultural, mining, construction, or other ground-disturbing activity on state and private lands without causing avoidable or undue delay or hardship for any person who has an interest in using the land on which the burial site is located;

(c) recognize the interests, concerns, and obligations of those having a kinship, tribal, cultural, or religious affiliation with the burial site and balance those interests

against the interests of scientists, landowners, and developers;
and

(d) provide to the board an exemption from the open meeting and public records laws when public disclosure of the location of a burial site could result in pilferage, disturbance, or destruction of the site- ; AND

(E) RECOGNIZE THE NEED FOR FORENSIC EXAMINATION OF HUMAN SKELETAL REMAINS, BURIAL SITES, AND BURIAL MATERIAL IF THE COUNTY CORONER, COUNTY ATTORNEY, OR STATE MEDICAL EXAMINER DETERMINES AN EXAMINATION IS NECESSARY UNDER STATE LAW.

NEW SECTION. Section 3. **Definitions.** As used in [sections 1 through 9 10 AND 13], the following definitions apply:

(1) "Board" means the burial preservation board established in [section 4].

(2) "Burial material" means any item found at the burial site or with the human skeletal remains and directly associated with the burial or burial site.

(3) "Burial site" means, EXCEPT FOR CEMETERIES AND GRAVEYARDS PROTECTED UNDER EXISTING STATE LAW, any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were intentionally deposited as a part of the death rites or ceremonies of a culture.

(4) "Human skeletal remains" means any part of the human body in any state of decomposition TAKEN FROM A BURIAL SITE.

(5) "Marked, unmarked, unrecorded, registered, or unregistered grave or burial ground" means any place, including EXCEPT a cemetery OR GRAVEYARD PROTECTED UNDER EXISTING STATE LAW, where human skeletal remains are or have been interred.

(6) "Scientifically justifiable" means that the human skeletal remains or burial material has a potential to address specific research questions in the science of anthropology, history, or biology.

(7) "Tribal group" means an Indian tribe recognized by the United States secretary of the interior or recognized as a tribe by other Indian nations.

NEW SECTION. Section 4. **Board -- composition -- rights -- responsibilities.** (1) There is a burial preservation board. The board is composed of:

(a) ~~one person~~ REPRESENTATIVE appointed by the ~~tribal governmental body of each of the seven Indian reservations in Montana~~ GOVERNOR FROM EACH OF THE SEVEN RESERVATIONS FROM A LIST OF UP TO THREE NOMINEES PROVIDED BY EACH OF THE RESPECTIVE TRIBAL GOVERNMENTS;

(b) one person appointed by THE GOVERNOR FROM A LIST OF UP TO THREE NOMINEES SUBMITTED the Little Shell band of Chippewa Indians;

(c) one person appointed by the Montana state historic preservation officer;

(d) a representative of the Montana archaeological association appointed by the coordinator of Indian affairs FROM A LIST OF UP TO THREE NOMINEES SUBMITTED BY THE MONTANA

ARCHAEOLOGICAL ASSOCIATION;

(e) one physical anthropologist appointed by the state medical examiner; and

(f) a representative of the Montana ~~coroner's~~ CORONERS' association appointed by the coordinator of Indian affairs FROM A LIST OF UP TO THREE NOMINEES SUBMITTED BY THE MONTANA CORONERS' ASSOCIATION; AND

(G) ONE REPRESENTATIVE OF THE PUBLIC, APPOINTED BY THE ATTORNEY GENERAL, WHO IS NOT ASSOCIATED WITH TRIBAL GOVERNMENTS; STATE GOVERNMENT; THE FIELDS OF HISTORIC PRESERVATION, ARCHAEOLOGY, OR ANTHROPOLOGY; OR THE MONTANA CORONERS' ASSOCIATION.

(2) MEMBERS OF THE BOARD SHALL SERVE STAGGERED 2-YEAR TERMS. A VACANCY ON THE BOARD MUST BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT AND ONLY FOR THE UNEXPIRED PORTION OF THE TERM.

~~(2)~~ (3) The board shall:

(a) provide for the establishment and maintenance of a registry of burial sites located in the state;

(b) designate the appropriate member or members of the board, or a representative or representatives of the board, to conduct a field review upon notification of the discovery of human skeletal remains, a burial site, or burial materials;

(c) assist interested landowners in the development of agreements with the board for the treatment and disposition, with appropriate dignity, of human skeletal remains and burial material;

(d) mediate, upon application of either party, disputes that may arise between a landowner and known descendants that relate to the treatment and disposition of human skeletal remains and burial material;

(e) assume responsibility for final treatment and disposition of human skeletal remains and burial material if the field review recommendation is not accepted by the board's representatives and the landowner;

(f) establish a nonrefundable application fee, not to exceed \$50, for a permit for scientific analysis of human skeletal remains or burial material from burial sites as provided by [section 6];

(g) issue permits authorizing scientific analysis;

(h) accept grants or real or in-kind donations to carry out the purposes of [sections 1 through 9 10 AND 13];

(i) adopt rules necessary to administer and enforce the provisions of [sections 1 through 9 10 AND 13]; and

(j) perform any other duties necessary to implement the provisions of [sections 1 through 9 10 AND 13].

~~(3)~~ (4) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

~~(4)~~ (5) Members of the board shall serve without pay but are entitled to reimbursement for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503.

NEW SECTION. Section 5. ~~Inadvertent disturbance~~
DISCOVERY -- reporting requirements -- field review. (1) A person who by archaeological excavation or by agricultural, mining, construction, or other ground-disturbing activity ~~inadvertently disturbs or~~ discovers human skeletal remains, a burial site, or burial material shall immediately notify the county coroner. Failure to notify the county coroner subjects a person to the penalty provided in [section 8].

(2) Upon discovery of HUMAN SKELETAL REMAINS, a burial site ~~that is reasonably suspected to overlie adjacent remains, OR BURIAL MATERIAL~~, excavation or further disturbance must cease until the coroner has determined ~~that~~ WHETHER the remains are ~~not~~ subject to the provisions of Title 46, chapter 4, ~~part 1 or 2~~, or any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death OR WHETHER A FORENSIC EXAMINATION OF THE HUMAN SKELETAL REMAINS, BURIAL SITE, OR BURIAL MATERIAL IS NECESSARY. The coroner shall make his determination within 2 working days from the time the person responsible for the excavation notifies him of the discovery or recognition of the remains. ~~If possible, the~~ IF THE CORONER CANNOT MAKE THE DETERMINATION WITHIN 2 WORKING DAYS, HE SHALL NOTIFY A MEMBER OF THE BOARD OF THE REASON FOR AND THE APPROXIMATE LENGTH OF THE DELAY. THE coroner shall TAKE ALL REASONABLE STEPS TO make his determination without removing or causing further disturbance of the remains.

(3) IF A FORENSIC EXAMINATION; ACTION UNDER TITLE 46, CHAPTER 4; OR ACTION UNDER ANY OTHER RELATED PROVISIONS OF LAW CONCERNING THE INVESTIGATION OF THE CIRCUMSTANCES, MANNER, AND CAUSE OF DEATH; IS NECESSARY AND YIELDS EVIDENCE OF CRIMINAL ACTIVITY, THE EVIDENCE MAY BE SEIZED BY THE CORONER OR LAW ENFORCEMENT AGENCY WITH JURISDICTION FOR USE IN A CRIMINAL PROCEEDING AS PROVIDED BY LAW.

~~(3)~~ (4) If the coroner determines that the remains are not subject to ~~his authority~~ THE PROVISIONS OF TITLE 46, CHAPTER 4, OR ANY OTHER PROVISIONS OF LAW CONCERNING THE INVESTIGATION OF THE CIRCUMSTANCES, MANNER, AND CAUSE OF DEATH, AND THAT A FORENSIC EXAMINATION IS NOT NECESSARY, he shall telephone the state historic preservation officer within 24 hours. Within 24 hours of notification, the state historic preservation officer shall contact the landowner and the board or landowner and the board member representing the nearest reservation and notify them of the discovery of human skeletal remains, a burial site, or burial material.

(4) (5) If the state historic preservation officer cannot be contacted, the coroner shall notify a member of the board or the law enforcement agency of the nearest reservation within 24 hours. The board or the agency shall immediately notify the landowner and the board member representing that reservation.

~~(5)~~ (6) Within 36 hours ~~of~~ AFTER THE BOARD RECEIVES notification of a discovery of human skeletal remains, a burial site, or burial material, the board shall designate representatives to conduct, with the permission of the landowner,

an initial field review. If the field review cannot be completed within the next 36 hours, the board's representatives shall negotiate with the landowner or his representative for a reasonable time extension to complete the review. The field review must include:

- (a) a determination of whether the site can be preserved;
- (b) negotiation with the landowner concerning onsite reburial or disinterment and reburial; and
- (c) a recommendation, including a timeframe, concerning final treatment or disposition of the human skeletal remains or burial material.

~~(6)~~ (7) If the board's representatives fail to make a recommendation or if the landowner and the board cannot agree and mediation fails to provide a resolution acceptable to the landowner and the board, ~~the board shall oversee the reinterment of the human skeletal remains and burial material with appropriate dignity in an alternate location not subject to further subsurface disturbance.~~ CONTROL OF HUMAN SKELETAL REMAINS OR BURIAL MATERIALS IS VESTED IN THE BOARD AND THE BOARD MUST GIVE CONTROL OF THE REMAINS OR MATERIALS IN THE FOLLOWING PRIORITY TO:

- (A) THE DESCENDANTS, IF IDENTIFIABLE;
- (B) THE TRIBE OR OTHER CULTURAL GROUP THAT HAS THE CLOSEST CULTURAL AFFILIATION WITH THE HUMAN SKELETAL REMAINS OR BURIAL MATERIALS;
- (C) THE TRIBE OR OTHER CULTURAL GROUP RECOGNIZED AS HAVING ABORIGINALLY OR HISTORICALLY OCCUPIED THE AREA WHERE THE REMAINS OR MATERIALS WERE DISCOVERED IF, UPON NOTIFICATION BY THE BOARD, THE TRIBE OR CULTURAL GROUP STATES A CLAIM FOR THE REMAINS OR MATERIALS; OR
- (D) IF UNCLAIMED BY ANY TRIBE OR CULTURAL GROUP, TO THE BOARD, WHICH SHALL DETERMINE THE APPROPRIATE DISPOSITION AND OVERSEE THE REINTERMENT OF THE REMAINS AND MATERIALS.

(8) FOR PURPOSES OF THIS SECTION, "CULTURAL GROUP" MEANS A PRESENT DAY GROUP OR ORGANIZATION THAT HAS A RELATIONSHIP OF SHARED GROUP IDENTITY, WHICH CAN BE REASONABLY TRACED HISTORICALLY OR PREHISTORICALLY, WITH AN IDENTIFIABLE EARLIER GROUP OR ORGANIZATION.

NEW SECTION. Section 6. Scientific analysis -- permit required. (1) Although onsite reburial is preferred, the board may, upon petition by a person seeking permission to perform scientific analysis, grant a permit for the scientific removal and analysis of human skeletal remains and burial material upon proof and determination by the board that the analysis is scientifically justifiable. A petition for a permit must include:

- (a) payment of the nonrefundable application fee provided for in [section 4]; and
- (b) a brief narrative describing the methodology to be used, the timeframe needed to complete the scientific study, and any other information specifically requested by the board relating to the proposed study.

(2) The methodology proposed must be reviewed by the state

historic preservation officer or his designated representative and the physical anthropologist on the board, and a recommendation must be made to the full board. Once approved by the board, any change in methodology or in the timeframe must be approved by the board before the original timeframe expires. THE TIMEFRAME FOR SCIENTIFIC STUDY MAY NOT EXCEED 12 MONTHS FROM THE DATE OF ISSUANCE OF THE PERMIT.

(3) A permit for scientific analysis issued by the board is subject to terms, conditions, and procedures prescribed by the board and must include the condition that a permittee shall pay all costs of excavation, study, and disposition.

(4) THE BOARD SHALL EITHER ISSUE OR DENY A PERMIT WITHIN 30 WORKING DAYS FROM THE DATE OF PERMIT PETITION. If the board denies a permit upon a finding that scientific analysis is not justifiable, the board must provide the applicant with a written statement outlining the grounds for its finding. The applicant may appeal the decision of the board under the provisions of Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(5) The board may suspend or revoke a permit pursuant to the Montana Administrative Procedure Act upon a finding that the permittee has violated any provision of [sections 1 through 9 10 AND 13] or any term, condition, or procedure of a permit issued by the board.

(6) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO ACTION UNDER TITLE 46, CHAPTER 4; ACTION UNDER ANY OTHER RELATED PROVISIONS OF LAW CONCERNING THE INVESTIGATION OF THE CIRCUMSTANCES, MANNER, AND CAUSE OF DEATH; OR A FORENSIC EXAMINATION BY THE COUNTY CORONER.

NEW SECTION. Section 7. Nondisclosure of records. (1) The state historic preservation officer, in consultation with the board, shall maintain burial site records that are separate and distinct from those in the cultural resource registry and that are necessary to administer [sections 1 through 9 10 AND 13].

(2) Burial site records are confidential and available only to federal and, state, AND TRIBAL personnel, or their appointed representatives, who are legally charged with administering laws protecting cultural resources AND CRIMINAL JUSTICE AGENCIES.

(3) ~~However, statistical~~ STATISTICAL information compiled from burial site records must be made available to the general public. ANY INFORMATION CONCERNING BURIAL SITE RECORDS THAT IS RELEASED TO A CRIMINAL JUSTICE AGENCY IS CONFIDENTIAL CRIMINAL JUSTICE INFORMATION, AS DEFINED IN 44-5-103, AND IS SUBJECT TO DISSEMINATION PURSUANT TO 44-5-303.

NEW SECTION. Section 8. Prohibited acts -- penalties. (1) After July 1, 1991, a person may not, UNLESS AUTHORIZED UNDER [SECTIONS 1 THROUGH 10 AND 13] OR BY THE DESCENDANTS; TRIBE; CULTURAL GROUP; OR OTHER PERSON, GROUP, OR ENTITY TO WHICH THE BOARD GIVES THE HUMAN SKELETAL REMAINS OR BURIAL MATERIALS UNDER [SECTION 5 (7)]:

(a) purposely or knowingly pilfer, disturb, destroy, or permit pilferage, disturbance, or destruction of a marked,

unmarked, unrecorded, registered, or unregistered grave or burial ground or of burial material;

(b) for commercial use, knowingly possess, buy, sell, transport, barter, or display human skeletal remains or burial material acquired in violation of [sections 1 through 9 10 AND 13]; or

(c) ~~without consent of the board,~~ purposely or knowingly disclose information KNOWING that IT is ~~designated as confidential by the board and that may~~ HIGHLY PROBABLE THAT THE DISCLOSURE WILL lead to pilferage, disturbance, or destruction of a burial site.

Note to committee: The subcommittee wishes the full committee to choose either the subsection (c) above or the subsection (c) below. These are two separate versions, one of which the full committee should choose. The one above is the subcommittee's choice and the one below was put in the bill by a Rep. Boharski amendment adopted by the full committee.

(c) ~~without consent of the board,~~ purposely or knowingly disclose information ~~that is designated as confidential by the board and that may~~ with the intent that such disclosure will lead to pilferage, disturbance, or destruction of a burial site.

(2) A person convicted under the provisions of subsection (1)(a) ~~or (1)(b) is guilty of a felony and~~ may be fined an amount not to exceed ~~\$10,000~~ \$1,000, be imprisoned IN THE COUNTY JAIL for not more than ~~1 year~~ 6 MONTHS, or both. A person convicted of a subsequent violation of subsection (1)(a) ~~or (1)(b) is guilty of a felony and~~ may be fined an amount not to exceed ~~\$100,000~~ \$20,000, be imprisoned for not more than 5 years, or both.

(3) A PERSON CONVICTED UNDER THE PROVISIONS OF SUBSECTION (1)(B) MAY BE FINED AN AMOUNT NOT TO EXCEED \$50,000, BE IMPRISONED FOR NOT MORE THAN 20 YEARS, OR BOTH.

~~(3) (4)~~ A person convicted under the provisions of subsection (1)(c) ~~is guilty of a misdemeanor and~~ may be fined an amount not to exceed ~~\$5,000~~ \$500, be imprisoned for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(c) ~~is guilty of a felony and~~ may be fined an amount not to exceed \$10,000, be imprisoned for not more than ~~1 year~~ 5 YEARS, or both.

(4) A person who KNOWINGLY fails to give notice as required by [section 5(1)] ~~is guilty of a misdemeanor and~~ may be fined an amount not less than \$100 or more than \$500.

(5) ~~In addition to or in lieu of any penalty imposed by this section, the board, upon a finding that a person has violated any~~ A PERSON WHO VIOLATES A provision of this section or any term or condition of a permit issued under [section 6], ~~may~~

~~impose a fine IS SUBJECT TO A CIVIL PENALTY not to exceed \$2,000 for each THE FIRST violation AND NOT TO EXCEED \$10,000 FOR A SUBSEQUENT VIOLATION. A fine may be imposed only upon notice and following a hearing conducted pursuant to the Montana Administrative Procedure Act.~~

NEW SECTION. Section 9. Criminal enforcement and civil CIVIL PENALTY AND DAMAGES actions -- costs. (1) ~~The state and its political subdivisions are responsible for enforcement of [sections 1 through 9]. A criminal action may be initiated by a county attorney for violation of [sections 1 through 9] upon request of the board. Civil [SECTIONS 1 THROUGH 10 AND 13] DO NOT PRECLUDE CIVIL actions for damages resulting from violations of [sections 1 through 9] may be initiated by the board.~~

(2) ~~Costs of a civil action to enforce the provisions of [sections 1 through 9] must be awarded to the successful complainant THE BOARD MAY BRING AN ACTION UNDER [SECTION 8] FOR A CIVIL PENALTY.~~

NEW SECTION. Section 10. Section 2-3-203, MCA, is amended to read:--

"2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions. (1) ~~All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds must be open to the public.~~

(2) ~~All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.~~

(3) ~~Provided, however, the presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting shall be open.~~

(4) ~~However, a meeting may be closed to discuss a strategy to be followed with respect to collective bargaining or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public agency or when information acquired from an open meeting could result in pilferage, disturbance, or destruction of a burial site.~~

(5) ~~Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business which is within the jurisdiction of that agency shall be subject to the requirements of this section."~~ CLOSURE OF BOARD MEETINGS. THE BOARD MAY CLOSE PART OF A MEETING OF THE BOARD TO THE PUBLIC IF THE BOARD FINDS THAT INFORMATION THAT MAY BE ACQUIRED AT THAT PART OF THE MEETING MAY ALLOW A PERSON TO IDENTIFY A BURIAL SITE, HUMAN SKELETAL REMAINS,

OR BURIAL MATERIAL AND PILFER, DISTURB, OR DESTROY THE BURIAL SITE, HUMAN SKELETAL REMAINS, OR BURIAL MATERIAL.

Section 11. Section 2-6-101, MCA, is amended to read:

"2-6-101. Definitions. (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country;

(b) public records, kept in this state, of private writings, except as provided in 22-1-1103 and [section 7].

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings.

(4) All other writings are private."

Section 12. Section 2-6-102, MCA, is amended to read:

"2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103, in [section 7], and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him on demand a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing."

NEW SECTION. Section 13. Disposition of fees, grants, AND donations, and penalties. (1) THERE IS AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND. The board shall deposit any fee, grant, or donation received under [section 4] ~~or any penalty amount imposed under [section 8]~~ into the cultural and aesthetic projects account ~~provided for in 15-35-108,~~ to be used to pay expenses for board meetings or expenses incurred in conducting field reviews.

(2) THE MONEY IN THE ACCOUNT IS STATUTORILY APPROPRIATED TO THE BOARD, AS PROVIDED IN 17-7-502.

SECTION 14. SECTION 17-7-502, MCA, IS AMENDED TO READ:

"17-7-502. STATUTORY APPROPRIATIONS -- DEFINITION -- REQUISITES FOR VALIDITY. (1) A STATUTORY APPROPRIATION IS AN APPROPRIATION MADE BY PERMANENT LAW THAT AUTHORIZES SPENDING BY A STATE AGENCY WITHOUT THE NEED FOR A BIENNIAL LEGISLATIVE APPROPRIATION OR BUDGET AMENDMENT.

(2) EXCEPT AS PROVIDED IN SUBSECTION (4), TO BE EFFECTIVE, A STATUTORY APPROPRIATION MUST COMPLY WITH BOTH OF THE FOLLOWING PROVISIONS:

(A) THE LAW CONTAINING THE STATUTORY AUTHORITY MUST BE LISTED IN SUBSECTION (3).

(B) THE LAW OR PORTION OF THE LAW MAKING A STATUTORY APPROPRIATION MUST SPECIFICALLY STATE THAT A STATUTORY APPROPRIATION IS MADE AS PROVIDED IN THIS SECTION.

(3) THE FOLLOWING LAWS ARE THE ONLY LAWS CONTAINING STATUTORY APPROPRIATIONS: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; [SECTION 13]; AND SECTION 13, HOUSE BILL NO. 861, LAWS OF 1985.

(4) THERE IS A STATUTORY APPROPRIATION TO PAY THE PRINCIPAL, INTEREST, PREMIUMS, AND COSTS OF ISSUING, PAYING, AND SECURING ALL BONDS, NOTES, OR OTHER OBLIGATIONS, AS DUE, THAT HAVE BEEN AUTHORIZED AND ISSUED PURSUANT TO THE LAWS OF MONTANA. AGENCIES THAT HAVE ENTERED INTO AGREEMENTS AUTHORIZED BY THE LAWS OF MONTANA TO PAY THE STATE TREASURER, FOR DEPOSIT IN ACCORDANCE WITH 17-2-101 THROUGH 17-2-107, AS DETERMINED BY THE STATE TREASURER, AN AMOUNT SUFFICIENT TO PAY THE PRINCIPAL AND INTEREST AS DUE ON THE BONDS OR NOTES HAVE STATUTORY APPROPRIATION AUTHORITY FOR SUCH PAYMENTS. (IN SUBSECTION (3), PURSUANT TO SEC. 10, CH. 664, L. 1987, THE INCLUSION OF 39-71-2504 TERMINATES JUNE 30, 1991.)"

NEW SECTION. Section 15. Appropriation. There is appropriated ~~\$5,000~~ \$10,000 from the ~~cultural and aesthetic projects account provided for in 15-35-108~~ GENERAL FUND to the board for THE TWO fiscal year ~~1992~~ YEARS BEGINNING JULY 1, 1991, to be used to pay expenses for board meetings or expenses incurred in conducting field reviews.

NEW SECTION. Section 16. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 17. Effective dates. (1) [Section 4 and this section] are effective on passage and approval.

(2) [Sections 1 through 3 and, 5 through ~~15~~ 16, AND 18] are effective July 1, 1991.

NEW SECTION. SECTION 18. TERMINATION. [SECTION 13, SUBSECTION (2), AND SECTION 14] TERMINATE ON JUNE 30, 1993.

-End-

EXHIBIT

DATE

HB

15

2-1-91

131

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE

2-1-91

BILL NO.

131

NUMBER

MOTION:

Rep. Measure moved the amendment
suggested by Rep. Boharski.

NAME

AYE

NO

REP. VIVIAN BROOKE, VICE-CHAIR		/
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI	/	
REP. DAVE BROWN		/
REP. ROBERT CLARK	/	
REP. PAULA DARKO		/
REP. BUDD GOULD		/
REP. ROYAL JOHNSON	/	
REP. VERNON KELLER	/	
REP. THOMAS LEE		
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE	/	
REP. LINDA NELSON	/	
REP. JIM RICE	/	
REP. ANGELA RUSSELL		/
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE		/
REP. TIM WHALEN		/
REP. DIANA WYATT		/
REP. BILL STRIZICH, CHAIRMAN		/
TOTAL	9	10

EXHIBIT

16

DATE

2-1-91

HOUSE OF REPRESENTATIVES

HB

131

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE

2-1-91

BILL NO.

131

NUMBER

MOTION:

Rep. Rice to amend the entire penalty section
w/ exception of changing sent. of 20 yrs. to 10 yrs.

NAME

AYE

NO

REP. VIVIAN BROOKE, VICE-CHAIR		/
REP. ARLENE BECKER		/
REP. WILLIAM BOHARSKI	/	
REP. DAVE BROWN	/	
REP. ROBERT CLARK	/	
REP. PAULA DARKO		/
REP. BUDD GOULD		/
REP. ROYAL JOHNSON	/	
REP. VERNON KELLER	/	
REP. THOMAS LEE		
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON	/	
REP. JIM RICE	/	
REP. ANGELA RUSSELL		/
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE		/
REP. TIM WHALEN	/	
REP. DIANA WYATT		/
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	10	9

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By FRANCIS BARDANOUVE, on March 6, 1991, at 8:02 a.m.

ROLL CALL

Members Present:

Francis Bardanouve, Chairman (D)
Ray Peck, Vice-Chairman (D)
Dorothy Bradley (D)
John Cobb (R)
Dorothy Cody (D)
Mary Ellen Connelly (D)
Ed Grady (R)
John Johnson (D)
Mike Kadas (D)
Berv Kimberley (D)
Wm. "Red" Menahan (D)
Jerry Nisbet (D)
Mary Lou Peterson (R)
Joe Quilici (D)
Chuck Swysgood (R)
Bob Thoft (R)
Tom Zook (R)

Members Excused: Larry Grinde (R)

Staff Present: Terry Cohea, Legislative Fiscal Analyst
Sylvia Kinsey, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HB 131

Human Skeletal Remains and Burial Site Protection Act

Presentation and Opening Statement by Sponsor:

REP. VIVIAN BROOKE, HD 56, Missoula said this Bill is requesting a one-time appropriation of \$10,000 to operate the Board that is setup in HB 131. It is the burial preservation Board and the description of it is defined on pages 6, 7, and 8 of the House Bill, second reading copy. This 13-member Board would convene to set policies and procedures and review them. They are set out in HB 131 for the discovery of unmarked burial sites. They would convene about 5 times through the course of the Biennium for this

purpose and have estimated this one-time appropriation. After two years they estimate the Board would be funded through grants and permit fees set up in the Bill for scientific study and also other types of permitting fees. There probably would not be a great deal of need for the total 13-member Board to meet once they have established their policies and procedures. They will only convene as needed, as burial sites are discovered or as one or two members of the Board were called in by the Historical Preservation person of the state to examine and go through the proceedings. This received a very good hearing in House Judiciary and the Subcommittee worked on the Bill and came up with this manner of appropriation. The House recommended approval of this concept and encouraged this Committee to give it favorable consideration.

Proponents' Testimony: There were about 20 people who stood in support of this Bill.

Questions From Committee Members: REP. QUILICI said there were some fees, grants and donations going into a special account and asked where they came from? Karen Atkinson, Attorney, for the Tribes who drafted this legislation said the fees, grants and donations will primarily come from a fee charged to anyone who is requesting scientific study of the remains. The Board will issue permits for scientific study and charge a \$50 fee to evaluate proposals. They hope to seek other grant money to help support the Board.

SEN. GAGE said this Bill was in the Senate last session and the Highway Department and Archaeologists torpedoed it because they felt there was not enough input into the Bill.

Motion/vote: REP. QUILICI moved DO PASS HB 131. Motion carried with REPS. SWYSGOOD and THOFT Voting No.

HEARING ON HB 645

Appropriate Money to OPI for Grants to Districts that Experience a Disaster.

Presentation and Opening Statement by Sponsor: REP. LINDA NELSON, HD 19, Plentywood said this Bill was drafted with the intent of getting an appropriation for the Plentywood school system. Since the statutory appropriations cannot be made to private entities the legislative counsel suggested the sum of money requested be designated for schools that have experienced a disaster that renders their property unusable. This money would be dispensed by OPI. She wondered if this Bill is worded properly to accomplish what she wants it to do or if it needs a retroactive clause put on it to cover a fire that occurred in 1990. Fortunately no lives were lost and there were no serious injuries. The school has to be rebuilt and the insurance coverage is not adequate to cover all the damage.

HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE

ROLL CALL

DATE

3/6/91

NAME	PRESENT	ABSENT	EXCUSED
REP. FRANCIS BARDANOUVE, CHAIRMAN	✓		
REP. RAY PECK, VICE-CHAIRMAN	✓		
REP. DOROTHY BRADLEY	✓		
REP. JOHN COBB	✓		
REP. DOROTHY CODY	✓		
REP. MARY ELLEN CONNELLY	✓		
REP. ED GRADY	✓		
REP. LARRY GRINDE			✓
REP. JOHN JOHNSON	✓		
REP. MIKE KADAS	✓		
REP. BERV KIMBERLEY	✓		
REP. WM. "RED" MENAHAN	✓		
REP. JERRY NISBET	✓		
REP. MARY LOU PETERSON	✓		
REP. JOE QUILICI	✓		
REP. CHUCK SWYSGOOD	✓		
REP. BOB THOFT	✓		
REP. TOM ZOOK	✓		

HOUSE STANDING COMMITTEE REPORT

March 6, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Appropriations report that
House Bill 131 (first reading copy -- white) do pass.

Signed: Francis Bardanouve, Chairman

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 22, 1991, at 10:05 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Greg Petesch and Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: none

HEARING ON HOUSE BILL 915

Presentation and Opening Statement by Sponsor:

Representative Dorothy Cody, District 20, said HB 915 addresses unlawful flight as a means of avoiding prosecution, and was requested by the Assiniboine and Sioux Tribes. She stated that the bill would also help the State, and that neither the Tribes nor the state are forced to extradite, but extradition would be the same as it is between the states.

Representative Cody advised the Committee that the attorney for the Fort Peck Reservation was unable to attend. She said the Tribes passed a resolution which is very similar to the Uniform Act, but more simplified. Representative Cody told the Committee she has a copy of that resolution.

HEARING ON HOUSE BILL 131Presentation and Opening Statement by Sponsor:

Representative Vivian Brooke, District 56, explained that HB 131 is the Human Skeletal Remains and Burial Site Protection Act. She asked the Committee to please remember it is about respectful disposition of those remains. Representative Brooke told the Committee there were 19 proponents and no opponents at the House hearing. She reported that the bill was amended by a subcommittee, and passed the House by a considerable margin.

Representative Brooke advised the Committee that \$10,000 has been approved by House Appropriations, for a regulatory Board. She stated there is no current statute regulating unmarked burial sites and no consistency among county coroners in handling remains.

Proponents' Testimony:

Karen Atkinson, Attorney, Confederated Salish and Kootenai Tribes, said this is an issue of human dignity, and that there have been problems in the past with Indian burial sites outside the Flathead Reservation. She told the Committee there are 150,000 or more Indian remains in archeological institutions, and that Congress passed the National _____ and Repatriation Act, protecting human remains on reservations. She said they also passed an act for repatriation of 18,000 remains in the Smithsonian Institute, and that 33 states have passed similar legislation.

Ms. Atkinson advised the Committee that there is strong public policy in Montana protecting marked graves, but not unmarked sites, thus promoting excavation and looting of unmarked sites. She said the bill includes pioneers, settlers, and Indians, and applies to state and private lands, filling in the gap in federal law. She said the bill would codify the common law rule that a landowner does not own human remains on his or her lands, but these remains are held in trust for surviving family members.

Ms. Atkinson stated that a burial board would assume the responsibility of relocating remains, and would maintain a registry of burial sites within the state, as well as issue permits for scientific study. She said there would be 13 board members, comprised of tribal representatives, various state agencies, and a member of the public at large.

Ms. Atkinson further advised the Committee that the board would operate under specific time limits, making decisions within one week. She said the board can keep records confidential to prevent further harm to burial sites, and that the bill establishes criminal and civil penalties for removal and commercial use of remains.

Ms. Atkinson explained that it is hoped the board would become self-supporting through fees, grants, and donation. She said there

are amendments that the proposed board will not interfere with the duties of coroners, and to provide for confidentiality. Ms. Atkinson urged the Committee to support HB 131.

Patrick Lefthand, Tribal Councilman, Confederated Salish and Kootenai Tribes, told the Committee the Tribes have been working for a number of years to establish this protection. He explained that aboriginal territories would overlap each other, and that this bill provides for a system to handle this overlap. He stated this legislation has come a long way in its development.

Mr. Lefthand told the committee the bill would help tribes to have protection against grave hunters who sell items on the black market. He stated that graves are found quite regularly, that they can go back up to 14,000 years. Mr. Lefthand said the bill seeks protection for all burial sites, not just for Native Americans. He said the Tribes have worked with the counties on these matters, and just buried prehistoric remains in Southwestern Montana. He urged the Committee to support the bill.

Larry Summer, Director, Montana Historical Society, and State Art Preservation Office, stated his support of the bill. He read from prepared text (Exhibit #3).

Jim Morsette, Tribal Councilman, Rocky Boy Reservation, stated his support of HB 131.

Germaine Montier, Cultural Resources Protection Officer, Confederated Salish and Kootenai Tribes, told the Committee that even if remains are thousands of years old they deserve the same respect as other remains. She said the Montana Department of Highways and other agencies support this bill, and that this legislation is long overdue. Ms. Montier urged the Committee to support HB 131, and provided letters of support from Patrick Chief Stick, Sr., and Edwin Dahle (Exhibits #4 and #5).

Francis Auld, Kootenai Cultural Committee, urged the Committee to support HB 131. He said he was brought up with a great deal of respect for the dead, and that it saddens his heart when his children are taken to museums, and then ask why their ancestors' remains are in museums and not buried. He explained that his children do not understand this, but must say the Pledge of Allegiance in school each day.

Kathleen Fleury, Coordinator of Indian Affairs, said she speaks for all tribes in Montana. She said burial grounds of Indians are considered to be sacred sites, and urged the passage of HB 131 to protect Native American remains.

David Schwab, Montana State Archeologist, stated his support of the bill. He said he has been involved in negotiations with the Tribes, and believes the concerns of everyone are addressed in HB 131. Mr. Schwab told the Committee that the field of archeology is progressive, and is now finding that it was not sensitive to the

needs of tribal people. He urged the Committee to pass HB 131 (Exhibit #6).

Edrie Vinson, Environmental Section Supervisor, preconstruction Bureau, Montana Department of Highways, said he studied the effect of the bill, and reported that of 30,000 sites in Montana only 63 or .002 percent are burial sites. He advised the Committee he believes the bill will have little impact on state agencies, and that he had no opposition to this legislation.

John Vollertsen, graduate student, University of Montana, told the Committee he recently witnessed the uncovering of a grave site by a construction firm, and asked his professor of archeology to look into it. He said that was more than a month ago but the Department of Fish, Wildlife and Parks has never received a report from either the construction firm or the University of Montana. Mr. Vollertsen said he doesn't believe that any one person or company should be responsible for determining how a burial site should be disposed of. He commented that it would be a great advantage for industry to know who to report to, as well as to get a timely response. Mr. Vollertsen advised the Committee that HB 131 is excellent, and solicited their support.

M.E. "Mickey" Nelson, Lewis and Clark County Coroner, read a letter of support from Steve Knecht, Judith Basin County Coroner and President of the Montana Coroners Association, commending the Tribes for their leadership role in this matter.

Paul Johnson, Assistant Attorney General, said he was appearing on behalf of the Attorney General and the Medical Examiner, both of whom support this balanced protection. He said the bill would promote integrity of the excavation system in dealing with remains in Montana.

Carol Dubay, Flathead Reservation, said she was speaking for herself, the Tribes, and all Indian people. She advised the Committee of an article in the National Geographic, Vol. 175, #3, March 1989, "Who Owns the Past" (concerning Indian burial grounds). Ms. Dubay stated that the Kentucky Legislature changed deliberate excavation of Indian burial sites from a misdemeanor to a felony. She said all people are-equal, and asked the Committee to look into their hearts to see if they would like their relatives' remains moved.

Joann T. Bird, St. Regis, told the Committee that there are graves in a field on her father's farm near Lewistown, and that he plows around them each year, leaving them undisturbed. She said her mother's ancestors are buried in an unmarked corner of a field on family land near Grass Range. Mrs. Bird said she would not want to see those remains disturbed, and related a story from her college days. She said an excavator uncovered a burial site in Southcentral Montana (in 1968), which was estimated to be about 12,000 years old, and that archaeologists from Montana State University (MSU) removed many of the remains from that site. Mrs.

Bird advised the Committee that she was involved in the decision to report the site to MSU, and many years later came to understand the effect of this action. She explained that two years ago she refused an opportunity to care for a home in Anchorage, Alaska, partly because she was uncomfortable with the fact that the owner looted artifacts from burial sites all over the world.

Opponents' Testimony:

There were no opponents of HB 131.

Questions From Committee Members:

Chairman Pinsoneault asked if there was ever a practice of cremation among the tribes. Patrick Lefthand replied this was a practice of some tribes, particularly for chiefs, so they would not be disturbed by other tribes.

Senator Towe said he agreed with the purpose of the bill, and that it was about time this legislation was presented. He commended Ms. Atkinson and the Tribes on their work. He asked what the scope of the bill is as it relates to other than Indian burial sites, and said that early pioneers and settlers do not appear to be represented on the proposed board. Karen Atkinson replied there will be members from state agencies, and a member from the public. She stated that pioneer graves will probably be dealt with by the State Historical Preservation Office.

Senator Towe asked why board members would not be appointed by the Governor, instead of the Coordinator of Indian Affairs. He said he was surprised at Kathleen Fleury having all this authority. Karen Atkinson replied the drafters felt the Office of the Attorney General did not have the expertise to make those appointments, and said the Governor did not come up.

Senator Towe stated his brother-in-law was cleaning out from under an old barn to build onto it, and found a human skull. He asked if his brother would have had to immediately cease excavation under this bill. Karen Atkinson replied that, under current code, Senator Towe's brother would have to contact the county coroner. She said the proposed board would also have to be notified, and would make a field review. Ms. Atkinson commented that the bill allows for negotiations among interested parties. She stated that if the parties fail to agree, then control is vested in the proposed board in line with priorities in recently passed federal law (Section 7, page 11 of the bill). Ms. Atkinson further stated that the proposed board would remove the remains.

Senator Towe said he was concerned about the confidentiality section, and asked if a legitimate relative could receive information on remains. Karen Atkinson replied that location information is kept confidential, but she does not believe it would be a violation to release information to next of kin who have a legal right to this information.

Senator Yellowtail asked if there were anything in this act imposing obligations on persons who casually discover burial remains to report their location. Karen Atkinson replied they would be required to report this information to the county coroner, but the bill comes into action primarily where there is ground-breaking activity.

Senator Yellowtail asked if possession of material taken from a burial site is illegal. Karen Atkinson replied it is.

Senator Svrcek asked what the position is for people who now possess such artifacts. Karen Atkinson replied this applies to future acquisition, and that federal law provides for repatriation, but HB 131 does not.

Closing by Sponsor:

Representative Brooke told the Committee it has been a tremendous experience to sponsor HB 131. She said that in November 1990 three of her family members were buried in the Ronan cemetery, and that HB 131 would have a tremendous effect on the part of the Confederated Salish and Kootenai Tribes, as well as other tribes.

Representative Brooke stated there is a sacred trust in valuing those who go before us, and that the bill represents tying together the past and the future, as well as consensus and compromise on issues in this state. Representative Brooke commended Karen Atkinson and the others who worked on HB 131. She said Senator Gage was concerned with this issue and would carry the bill.

EXECUTIVE ACTION ON HOUSE BILL 131

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Towe said he was concerned with confidentiality i the bill. He made a motion to insert "bonafide relative or descendent of the person thought to be buried therein", following "only to" on page 14, line 18 of the bill.

Karen Atkinson said she had no objection to the amendment.

Senator Crippen said he had no problem with confidentiality as it stands in the bill now. Senator Towe replied that it would be very frustrating if there were no access to information concerning a family burial site, and that he believes the intent of the bill

is to give first right to descendants to control. Karen Atkinson commented that the bill does apply to all unmarked graves, and that the ability to put names to graves is very slim.

Senator Rye said he objected to the amendment, and that he believes the bill is good as it is. He said "bonafide" leaves an opening for trouble.

The motion made by Senator Towe failed 4-7, in a roll call vote (attached). Senator Halligan was not present and did not leave a vote.

Recommendation and Vote:

Senator Svrcek made a motion that HB 131 BE CONCURRED IN. The motion carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 915

Motion:

Senator Towe made a motion that HB 915 BE CONCURRED IN with the proviso to come back if the Attorney General has concerns.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were none.

Recommendation and Vote:

The motion made by Senator Towe carried unanimously. Senator Pinsoneault will carry HB 915.

EXECUTIVE ACTION ON HOUSE BILL 631

Motion:

Discussion:

Senator Towe said that if Sections 1 and 3 are read together, an 18-year-old having sex with a 14-year-old would be sentenced to two years, but could have his or her sentence deferred upon the findings of a judge that he or she be rehabilitated under local control.

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1991

Date 22 Mar 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 22, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 131 (third reading copy -- blue), respectfully report that House Bill No. 131 be concurred in.

Signed: *Richard Pinsonneault*

Richard Pinsonneault, Chairman

3-22-91
Amd. Coord.

3-23-92 1:10
Sec. of Senate



State Historic Preservation Office

Montana Historical Society

Mailing Address: 225 North Roberts • Helena, MT 59620-9990

Office Address: 102 Broadway • Helena, MT • (406) 444-7715

March 21, 1991

Testimony on House Bill 131

by Lawrence Sommer, Director, Montana Historical Society

Mr. Chairman, I am pleased to come to today's hearing to tell you of the Montana Historical Society's enthusiastic support for House Bill 131.

I would highlight four summary, but very important reasons for the Society's support for this bill.

First, the need for it is well established: for far too long we have treated scattered burials at best haphazardly and often very callously.

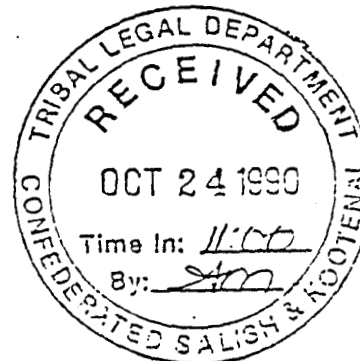
Second, it is simple and understandable. We've seen too many burial bills that will not solve any problems because the time periods involved and number of consulting groups involved are so great that the bills have created confusion not resolution.

Third, it leaves the right people involved at the right time. Coroners continue to play the critical role they now play--determining whether a burial is recent or potentially related to a crime. If a coroner so determines that, his call prevails and no other procedures are set in motion. If a burial has antiquity, disposition of it falls under the direction of a simple, straightforwardly comprised Board. And, the bill offers methods to resolve decisions about burials quickly--even in a state where distance can mean time. Since most of our random burials are Native American in origin, Board composition reflects that. But Board procedures offer a clear avenue for interaction among archaeologists and people representing a different historical background. It creates no new power roles or bureaucracies.

Finally and most important, House Bill 131 has evolved from 2 years of concentrated consultation among tribes, archaeologists, coroners, and agency personnel. We have been impressed with the consensus building that has occurred over the last two years. While there are professional archaeologists with whom we work who might like a somewhat different bill, the majority of the professional community has involved itself wholly in development of the bill and accepts the premises and needs on which this bill is built. In short, I believe that a number of people took your 1989 charge seriously and have developed for you a real consensus measure.

Thank you.

CL = 4
HB131
22 Mar 9.



October 22, 1990

Karen J. Atkinson
Tribal Attorney
Salish & Kootenai Tribes
P.O. Box 278
Pablo, MT 59855

RE: Montana Burial Legislation and Repatriation

Dear Ms. Atkinson:

I have reviewed the contents of the Montana Burial Bill and I cannot add anything to it because it is pretty well written.

Your memorandum specifically states you are going to shoot it to the Montana State Legislature. If the repatriation sections of the federal bill does not pass in Congress, this is also a good move.

The human skeletal remains and burials are most sacred, especially to my Tribe. We have to have some kind of protection, whether it is federal or state.

Repatriation is most important to all Indians in this state and if it has to be a separate bill, let's do it this way to satisfy our Indian people.

With best regards,


Patrick Chief Stick, Sr.



NORTHERN CHEYENNE TRIBE
INCORPORATED

P.O. Box 128
LAME DEER, MONTANA 59043

EX # 5
HB 131
22 Mar 91

January 10. 1991

RECEIVED

JAN 11 1991

Micheal T. Pablo, Chairman
Confederated Salish & Kootenai Tribes
P.O. Box 278
Pablo, Mt. 59855

CS & KT TRIBES

Dear Mr. Pablo:

On behalf of the Northern Cheyenne Tribe I am writing this Letter of Support for the bill entitled: "The Human Skeletal Remains and Burial Site Protection Act."

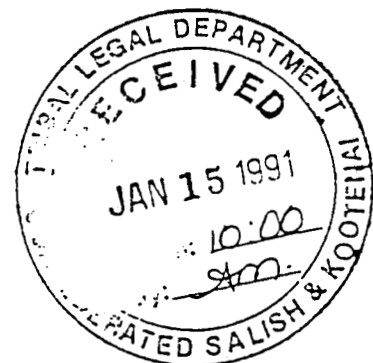
The Northern Cheyenne Tribe fully supports this legislation, we also strongly support the provisions relating to the matter of disclosure of information relating to burial sites. We feel that information like this should be held confidential.

We also feel that this piece of legislation should exclude Indian Reservations. We feel we are fully capable of handling our own affairs relating to preservation of burial sites.

Sincerely,

Edwin Dahle

Edwin Dahle, President
Northern Cheyenne Tribal Council



EX # 6
HB 131
22 Mar 91

NATIVE AMERICAN BURIALS IN MONTANA:
EXPECTATIONS AND INTERPRETATIONS

By

Gregory S. Newberry
Powers Elevations Co., Inc.

The purpose of this paper is to provide general background information that is thought to be germane to the reburial issue. Its intention is to provide base line data on the number of Native American burials in Montana, to describe the environmental contexts in which they are found, and to discuss briefly the problem of determining their tribal affiliation.

In Montana, reported burials of Native Americans are extremely rare. A search of the Montana State archeological site files revealed that of the 30,000-odd sites reported in the state, only 63 are confirmed burials of Native American people. These represent approximately .002 percent of all reported sites.

On the Northern plains, the scarcity of burials is a result of low population densities (generally <1 person per square mile) and interment practices. Known burials predating the Late Plains Archaic (ca. 400 B.C.) are so rare that it is impossible to describe any pattern of interment. Beginning in the Late Plains Archaic and continuing through the Historic Period, the dead were placed in a variety of contexts.

Based on information from site forms, interment took place in shallow graves (n=10), trees (n=1), on scaffolds (n=2), within shallow rock shelters or caves (n=5), talus slopes (n=6), rock crevices within outcrops (n=11), beneath rock piles (n=10) or in specially prepared cabins or monuments (n=2). This, as well as the ethnographic literature, demonstrate that interment practices among native plains groups were not as straight forward as among Euro-American populations. Following death, primary interment might take place in a shallow grave, rock crevice, tree or specially prepared scaffold. Burial in a tree or on a scaffold could be followed by secondary burial of the bones in a shallow grave, within a rockshelter or rock crevice or beneath a small pile of rock. Burial beneath piles of rock (cairns) is of particular interest since there appears to be a general misconception among both Native and Euro-American populations that many of these features contain burials.

Cairns are ubiquitous on the northern plains and a conservative estimate of their numbers would exceed 200,000.

Although they are seldom the primary focus of professional archaeological investigation, research suggests they served a variety of functions. Parallel lines of cairns are frequently associated with procurement features (pounds or jumps) for bison

or big horn sheep, and single lines stretching for several miles may have served as trail, locational, or territorial markers (Frison 1981:133-147). Malouf (1962:1-5) believes that some larger cairns have a ceremonial significant and have been built up through accretion as people added stones to cairns as "acts of devotion" (Frison 1981:146-147). The use of cairns as points of primary or secondary inhumation is reported in the ethnographic literature for the plains (Lowie 1935:67 and Denig 1930:571), but is rarely encountered in the archeological record for the area (L. Loendorf, personal communication 1990). Small quantities of bone are often found in cairns, and this may account for the popular belief that these features frequently contain burials. However, the vast majority of bone recovered from cairns is non-human, and is thought to have been introduced by rodents who den in cairns and gnaw on bone in order to meet their high calcium requirements (S. Aaberg, personal communication 1990).

With the exception of caves, burials are generally not located in environments that are especially conducive to preservation, nor was preservation of the physical remains necessary within the context of traditional plains ideology. In contrast to Christian dogma, where preservation of the physical remains is often conceived as a prerequisite for the eventual reunification of the soul with a renewed and perfect body, Plains Indian ideology would contend that this is not necessary in order to live well and happily in the after life (see Hoebel 1960:86-87). These considerations suggest that many Native American burials have been destroyed by natural processes.

As the number of burials is small, and given the highly mobile nature of the Plains adaptation, attempts to tie burials to specific tribal groups are extremely difficult. At present, less than one-sixth (n=11) of the known burials have been identified as to tribal affiliation, and the prospects for doing better are poor. The primary obstacle to identification is intrinsic to the nature of the plains adaptation.

It has become almost an article of faith among plains archaeologists that human adaptation to the short grass environment is primarily a response to changes in the size and location of bison herds. Based on present interpretations of bison kill sites from Montana, Wyoming, Alberta, and Saskatchewan, it appears that bison populations have fluctuated dramatically during most of plains prehistory. The behavioral response to changes in herd size and location are thought to include, but are not limited to, movements of several hundred miles (but perhaps less) and associations among different local groups for the purpose of exploiting localized concentrations of bison. These responses imply the need to form extensive alliance networks and suggest that any attempt to maintain exclusive access to territory would, in the long run, be disadvantageous.

The implication for the reburial issue is that it is specious to attempt a determination of the tribal identity of a burial based

upon its geographic location in relation to historical or ethnographically defined tribal territories. Identification based on osteological or associated cultural materials is also problematic owing to the nature of micro-evolutionary changes in plains populations (Gill 1974:104), and the homogenization of artifact inventories as a result of a common adaptation to the plains environment (Kehoe 1973:199).

Were the implications for archaeological research not so ominous, the sometimes strident politicization of the reburial issue in Montana would be pointless. The facts of the matter are that neither of the state universities has Native American osteological materials from Montana in their collections, and burials make up a extremely small percentage (.002 percent) of the state's archaeological record. Moreover, finding a burial during the course of fieldwork is even less probable. On average, one site is found for every three surveys conducted. Therefore, the probability that a site is, or contains, a burial is .0006.

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ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 22 Mar 91 Bill No. HB 131 Time 11:45 am

NAME	YES	NO
Sen. Brown	✓	
Sen. Crippen		✓
Sen. Doherty	✓	
Sen. Grosfield	✓	
Sen. Halligan		
Sen. Harp		✓
Sen. Mazurek		✓
Sen. Rye		✓
Sen. Svrcek		✓
Sen. Towe	✓	
Sen. Yellowtail		✓
Sen. Pinsoneault		✓

4 . 7

Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion: (C) This Amend.

DATE 3-22-91

COMMITTEE ON

Judiciary

131 HB 618 HB 747

VISITORS' REGISTER

HB

HB 631

HB 915

NAME

REPRESENTING

BILL #

Check One

Support Oppose

John Vollerksen

Self

HB 131

✓

Jim Morsette

Chippewee Tribe

HB 915

✓

STAR JAMISON

RAPE CRISIS CENTER

HB 451

✓

M.E. "Mickey" Nielson

Lacco. Council

HB 131

✓

Jim Morsette

Chippewee Tribe

HB 131

✓

Marilyn Sheff

Montana Hist. Soc.

HB 131

✓

Linda Sommer

Mont. Historical Society

HB 131

✓

Norman Martin

CONFEDERATED SALISH & KOOTENAI TRIBES

HB 131

✓

Eddie Hansen

Dept Highway

HB 131

✓

Paul Johnson

Attorney General State Medical

HB 131

✓

HARLEY WARNER

MONT. ASSOC. EXCH. OF CHURCHES

HB 747

X

Charles Burke

Kootenai Culture Comm

HB 131

X

Pat Lefthand

E2154 & Kootenai TR. Bd Council

HB 131

X

Francis Axel

Kootenai Culture Comm

HB 131

X

Louise C. Burke

Kootenai " "

HB 131

X

Lillian Swindell

Kootenai Cultural Program

HB 131

X

David Schwab

Montana SHPO

HB 131

X

Tom Antiste

Kootenai

HB 131

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Sue Antiste

Kootenai

HB 131

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Diane Sands

MT Highways

HB 631

✓

Karen Atkinson

CSKT

HB 131

✓

Kathleen Fleury

COORDINATOR OF INDIAN AFFAIRS

HB 131

✓

~~Thomas N. Lee~~~~COORDINATOR OF INDIAN AFFAIRS~~~~HB 131~~~~✓~~

Thomas N. Lee

HD 49 DU

HB 747

✓

Thomas N. Lee

HD 49

HB 131
HB 631

✓

Paul Johnson

HB 631 County Attorneys

HB 631

✓

(Please leave prepared statement with Secretary)

1 HOUSE BILL NO. 131

2 INTRODUCED BY BROOKE, GAGE, REAM, BARNHART, CODY, O'KEEFE,
3 YELLOWTAIL, DARKO, WANZENRIED, J. RICE, GERVAIS, SVRCEK,
4 GRADY, DOHERTY, RUSSELL

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE HUMAN
7 SKELETAL REMAINS AND BURIAL SITE PROTECTION ACT; CREATING A
8 BURIAL PRESERVATION BOARD; ESTABLISHING REPORTING AND
9 NOTIFICATION PROCEDURES REGARDING DISTURBANCE OF A BURIAL
10 SITE; PROVIDING FOR FIELD REVIEW AND SCIENTIFIC ANALYSIS;
11 PROVIDING DISINTERMENT AND REINTERMENT PROCEDURES; PROVIDING
12 FOR FEES AND CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR
13 DISPOSITION OF FEES, GRANTS, AND DONATIONS,--AND--PENALTIES;
14 EXEMPTING PARTS OF MEETINGS FROM THE OPEN MEETING LAWS UNDER
15 CERTAIN CONDITIONS; PROVIDING FOR CONFIDENTIALITY OF
16 RECORDS; GRANTING THE BOARD RULEMAKING AUTHORITY; PROVIDING
17 FOR A 2-YEAR STATUTORY APPROPRIATION; APPROPRIATING MONEY
18 FROM THE CULTURAL-AND--AESTHETIC--PROJECTS--ACCOUNT GENERAL
19 FUND; AMENDING SECTIONS 2-3-203, 2-6-101, AND 2-6-102, AND
20 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A
21 TERMINATION DATE."

22 STATEMENT OF INTENT

23
24 A statement of intent is required for this bill because
25 [section 4] grants to the burial protection PRESERVATION

1 board rulemaking authority to implement the provisions of
2 this bill. At a minimum, it is the intent of the legislature
3 that the board adopt rules:

4 (1) governing the conduct of board business;

5 (2) establishing and maintaining a registry of burial
6 sites located in the state;

7 (3) establishing criteria for conducting field reviews
8 upon notification of a discovery of human skeletal remains,
9 burial sites, or burial materials; and

10 (4) establishing guidelines and forms for the issuance
11 of a permit for scientific analysis of human remains or
12 burial materials.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 (Refer to Introduced Bill)

16 Strike everything after the enacting clause and insert:

17 NEW SECTION. Section 1. Short title. [Sections 1
18 through 10 and 13] may be cited as the "Human Skeletal
19 Remains and Burial Site Protection Act".

20 NEW SECTION. Section 2. Legislative findings and
21 intent. (1) The legislature of the state of Montana finds
22 that:

23 (a) the state and its citizens have an obligation to
24 protect from disturbance or destruction all human skeletal
25 remains, burial sites, and burial material, including those

1 in marked, unmarked, unrecorded, registered, or unregistered
2 graves or burial grounds located on state or private lands
3 that are not protected as cemeteries or graveyards under
4 existing state law;

5 (b) marked, unmarked, unrecorded, registered, or
6 unregistered graves or burial grounds not protected as
7 cemeteries or graveyards under existing state law are
8 increasingly subject to pilferage, disturbance, and
9 destruction for commercial purposes, including land
10 development, agriculture, mining, and the sale of artifacts;

11 (c) private collection of artifacts may result in the
12 destruction of burial sites. Existing law reflects the value
13 society places on preserving human burial sites, but the law
14 does not clearly provide equal and adequate protection or
15 incentives to ensure preservation and protection of all
16 burial sites in the state regardless of ethnic origin,
17 burial context, or age.

18 (d) while some human skeletal remains and burial sites
19 may be of interest to science, the needs of the scientific
20 community to gather information and material from burial
21 sites must be balanced with the legal, moral, and religious
22 rights and obligations of tribal groups, next of kin, or
23 descendants;

24 (e) preservation in place is the preferred policy for
25 all human skeletal remains, burial sites, and burial

1 material; and

2 (f) notwithstanding any other provision of law,
3 [sections 1 through 10 and 13] are the exclusive laws
4 governing the treatment of human skeletal remains, burial
5 sites, and burial materials.

6 (2) It is the intent of the legislature to:

7 (a) ensure that all burials be accorded equal treatment
8 and respect for human dignity without reference to ethnic
9 origin, cultural background, or religious affiliation;

10 (b) provide adequate protection for all interests
11 related to any burial site encountered during archaeological
12 excavation or agricultural, mining, construction, or other
13 ground-disturbing activity on state and private lands
14 without causing avoidable or undue delay or hardship for any
15 person who has an interest in using the land on which the
16 burial site is located;

17 (c) recognize the interests, concerns, and obligations
18 of those having a kinship, tribal, cultural, or religious
19 affiliation with the burial site and balance those interests
20 against the interests of scientists, landowners, and
21 developers;

22 (d) provide to the board an exemption from the open
23 meeting and public records laws when public disclosure of
24 the location of a burial site could result in pilferage,
25 disturbance, or destruction of the site; and

28

(e) recognize the need for forensic examination of human skeletal remains, burial sites, and burial material if the county coroner, county attorney, or state medical examiner determines an examination is necessary under state law.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 10 and 13], the following definitions apply:

(1) "Board" means the burial preservation board established in [section 4].

(2) "Burial material" means any item found at the burial site or with the human skeletal remains and directly associated with the burial or burial site.

(3) "Burial site" means, except for cemeteries and graveyards protected under existing state law, any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were intentionally deposited as a part of the death rites or ceremonies of a culture.

(4) "Human skeletal remains" means any part of the human body in any state of decomposition taken from a burial site.

(5) "Marked, unmarked, unrecorded, registered, or unregistered grave or burial ground" means any place, except a cemetery or graveyard protected under existing state law,

where human skeletal remains are or have been interred.

(6) "Scientifically justifiable" means that the human skeletal remains or burial material has a potential to address specific research questions in the science of anthropology, history, or biology.

(7) "Tribal group" means an Indian tribe recognized by the United States secretary of the interior or recognized as a tribe by other Indian nations.

NEW SECTION. Section 4. Board -- composition -- rights -- responsibilities. (1) There is a burial preservation board. The board is composed of:

(a) one representative of each of the seven reservations, appointed by the governor from a list of up to three nominees provided by each of the respective tribal governments;

(b) one person appointed by the governor from a list of up to three nominees submitted by the Little Shell band of Chippewa Indians;

(c) one person appointed by the Montana state historic preservation officer;

(d) one representative of the Montana archaeological association appointed by the coordinator of Indian affairs from a list of up to three nominees submitted by the Montana archaeological association;

(e) one physical anthropologist appointed by the state

1 medical examiner;

2 (f) one representative of the Montana coroners'
3 association appointed by the coordinator of Indian affairs
4 from a list of up to three nominees submitted by the Montana
5 coroners' association; and

6 (g) one representative of the public, appointed by the
7 attorney general, who is not associated with tribal
8 governments; state government; the fields of historic
9 preservation, archaeology, or anthropology; or the Montana
10 coroners' association.

11 (2) Members of the board shall serve staggered 2-year
12 terms. A vacancy on the board must be filled in the same
13 manner as the original appointment and only for the
14 unexpired portion of the term.

15 (3) The board shall:

16 (a) provide for the establishment and maintenance of a
17 registry of burial sites located in the state;

18 (b) designate the appropriate member or members of the
19 board or a representative or representatives of the board to
20 conduct a field review upon notification of the discovery of
21 human skeletal remains, a burial site, or burial materials;

22 (c) assist interested landowners in the development of
23 agreements with the board for the treatment and disposition,
24 with appropriate dignity, of human skeletal remains and
25 burial material;

1 (d) mediate, upon application of either party, disputes
2 that may arise between a landowner and known descendants
3 that relate to the treatment and disposition of human
4 skeletal remains and burial material;

5 (e) assume responsibility for final treatment and
6 disposition of human skeletal remains and burial material if
7 the field review recommendation is not accepted by the
8 board's representatives and the landowner;

9 (f) establish a nonrefundable application fee, not to
10 exceed \$50, for a permit for scientific analysis of human
11 skeletal remains or burial material from burial sites as
12 provided by [section 6];

13 (g) issue permits authorizing scientific analysis;

14 (h) accept grants or real or in-kind donations to carry
15 out the purposes of [sections 1 through 10 and 13];

16 (i) adopt rules necessary to administer and enforce the
17 provisions of [sections 1 through 10 and 13]; and

18 (j) perform any other duties necessary to implement the
19 provisions of [sections 1 through 10 and 13].

20 (4) The board is allocated to the department of
21 commerce for administrative purposes only as prescribed in
22 2-15-121.

23 (5) Members of the board shall serve without pay but
24 are entitled to reimbursement for travel, meals, and lodging
25 pursuant to 2-18-501 through 2-18-503.

NEW SECTION. Section 5. Discovery -- reporting

requirements -- field review. (1) A person who by archaeological excavation or by agricultural, mining, construction, or other ground-disturbing activity discovers human skeletal remains, a burial site, or burial material shall immediately notify the county coroner. Failure to notify the county coroner subjects a person to the penalty provided in [section 8].

(2) Upon discovery of human skeletal remains, a burial site, or burial material, excavation or further disturbance must cease until the coroner has determined whether the remains are subject to the provisions of Title 46, chapter 4, or any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death or whether a forensic examination of the human skeletal remains, burial site, or burial material is necessary. The coroner shall make his determination within 2 working days from the time the person responsible for the excavation notifies him of the discovery or recognition of the remains. If the coroner cannot make the determination within 2 working days, he shall notify a member of the board of the reason for and the approximate length of the delay. The coroner shall take all reasonable steps to make his determination without removing or causing further disturbance of the remains.

(3) If a forensic examination, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death is necessary and yields evidence of criminal activity, the evidence may be seized by the coroner or law enforcement agency with jurisdiction for use in a criminal proceeding as provided by law.

(4) If the coroner determines that the remains are not subject to the provisions of Title 46, chapter 4, or any other provisions of law concerning the investigation of the circumstances, manner, and cause of death and that a forensic examination is not necessary, he shall telephone the state historic preservation officer within 24 hours. Within 24 hours of notification, the state historic preservation officer shall contact either the landowner and the board or the landowner and the board member representing the nearest reservation and notify them of the discovery of human skeletal remains, a burial site, or burial material.

(5) If the state historic preservation officer cannot be contacted, the coroner shall notify a member of the board or the law enforcement agency of the nearest reservation within 24 hours. The board or the agency shall immediately notify the landowner and the board member representing that reservation.

(6) Within 36 hours after the board receives

1 notification of a discovery of human skeletal remains, a
 2 burial site, or burial material, the board shall designate
 3 representatives to conduct, with the permission of the
 4 landowner, an initial field review. If the field review
 5 cannot be completed within the next 36 hours, the board's
 6 representatives shall negotiate with the landowner or his
 7 representative for a reasonable time extension to complete
 8 the review. The field review must include:

9 (a) a determination of whether the site can be
 10 preserved;

11 (b) negotiation with the landowner concerning onsite
 12 reburial or disinterment and reburial; and

13 (c) a recommendation, including a timeframe, concerning
 14 final treatment or disposition of the human skeletal remains
 15 or burial material.

16 (7) If the board's representatives fail to make a
 17 recommendation or if the landowner and the board cannot
 18 agree and mediation fails to provide a resolution acceptable
 19 to the landowner and the board, control of human skeletal
 20 remains or burial materials is vested in the board and the
 21 board shall give control of the remains or materials in the
 22 following priority to:

23 (a) the descendants, if identifiable;

24 (b) the tribe or other cultural group that has the
 25 closest cultural affiliation with the human skeletal remains

1 or burial materials;

2 (c) the tribe or other cultural group recognized as
 3 having aboriginally or historically occupied the area where
 4 the remains or materials were discovered if, upon
 5 notification by the board, the tribe or cultural group
 6 states a claim for the remains or materials; or

7 (d) if unclaimed by any tribe or cultural group, the
 8 board, which shall determine the appropriate disposition and
 9 oversee the reinterment of the remains and materials.

10 (8) For purposes of this section, "cultural group"
 11 means a present-day group or organization that has a
 12 relationship of shared group identity which can be
 13 reasonably traced historically or prehistorically to an
 14 identifiable earlier group or organization.

15 NEW SECTION. Section 6. Scientific analysis -- permit
 16 required. (1) Although onsite reburial is preferred, the
 17 board may, upon petition by a person seeking permission to
 18 perform scientific analysis, grant a permit for the
 19 scientific removal and analysis of human skeletal remains
 20 and burial material upon proof and determination by the
 21 board that the analysis is scientifically justifiable. A
 22 petition for a permit must include:

23 (a) payment of the nonrefundable application fee
 24 provided for in [section 4]; and

25 (b) a brief narrative describing the methodology to be

1 used, the timeframe needed to complete the scientific study,
2 and any other information specifically requested by the
3 board relating to the proposed study.

4 (2) The methodology proposed must be reviewed by the
5 state historic preservation officer or his designated
6 representative and the physical anthropologist on the board,
7 and a recommendation must be made to the full board. Once
8 approved by the board, any change in methodology or in the
9 timeframe must be approved by the board before the original
10 timeframe expires. The timeframe for scientific study may
11 not exceed 12 months from the date of issuance of the
12 permit.

13 (3) A permit for scientific analysis issued by the
14 board is subject to terms, conditions, and procedures
15 prescribed by the board and must include the condition that
16 a permittee shall pay all costs of excavation, study, and
17 disposition.

18 (4) The board shall either issue or deny a permit
19 within 30 working days from the date of the permit petition.
20 If the board denies a permit upon a finding that scientific
21 analysis is not justifiable, the board shall provide the
22 applicant with a written statement outlining the grounds for
23 its finding. The applicant may appeal the decision of the
24 board under the provisions of Title 2, chapter 4, part 6, of
25 the Montana Administrative Procedure Act.

1 (5) The board may suspend or revoke a permit pursuant
2 to the Montana Administrative Procedure Act upon a finding
3 that the permittee has violated any provision of [sections 1
4 through 10 and 13] or any term, condition, or procedure of a
5 permit issued by the board.

6 (6) The provisions of this section do not apply to a
7 forensic examination by the county coroner, action under
8 Title 46, chapter 4, or action under any other related
9 provisions of law concerning the investigation of the
10 circumstances, manner, and cause of death.

11 NEW SECTION. Section 7. Nondisclosure of records. (1)
12 The state historic preservation officer, in consultation
13 with the board, shall maintain burial site records that are
14 separate and distinct from those in the cultural resource
15 registry and that are necessary to administer [sections 1
16 through 10 and 13].

17 (2) Burial site records are confidential and available
18 only to criminal justice agencies or to federal, state, and
19 tribal personnel or their appointed representatives legally
20 charged with administering laws protecting cultural
21 resources.

22 (3) Statistical information compiled from burial site
23 records must be made available to the general public. Any
24 information concerning burial site records that is released
25 to a criminal justice agency is confidential criminal

16

1 justice information, as defined in 44-5-103, and is subject
2 to dissemination pursuant to 44-5-303.

3 NEW SECTION. **Section 8. Prohibited acts -- penalties.**

4 (1) After July 1, 1991, unless authorized under [sections 1
5 through 10 and 13] or by the descendants, tribe, cultural
6 group, or other person, group, or entity to which the board
7 gives control of the human skeletal remains or burial
8 materials under [section 5], a person may not:

9 (a) purposely or knowingly pilfer, disturb, destroy, or
10 permit pilferage, disturbance, or destruction of a marked,
11 unmarked, unrecorded, registered, or unregistered grave or
12 burial ground or of burial material;

13 (b) for commercial use, knowingly possess, buy, sell,
14 transport, barter, or display human skeletal remains or
15 burial material acquired in violation of [sections 1 through
16 10 and 13]; or

17 (c) purposely or knowingly disclose information knowing
18 that it is highly probable that the disclosure will lead to
19 pilferage, disturbance, or destruction of a burial site.

20 (2) A person convicted under the provisions of
21 subsection (1)(a) may be fined an amount not to exceed
22 \$1,000, be imprisoned in the county jail for not more than 6
23 months, or both. A person convicted of a subsequent
24 violation of subsection (1)(a) may be fined an amount not to
25 exceed \$20,000, be imprisoned for not more than 5 years, or

1 both.

2 (3) A person convicted under the provisions of
3 subsection (1)(b) may be fined an amount not to exceed
4 \$50,000, be imprisoned for not more than 20 years, or both.

5 (4) A person convicted under the provisions of
6 subsection (1)(c) may be fined an amount not to exceed \$500,
7 be imprisoned for not more than 6 months, or both. A person
8 convicted of a subsequent violation of subsection (1)(c) may
9 be fined an amount not to exceed \$10,000, be imprisoned for
10 not more than 5 years, or both.

11 (5) A person who knowingly fails to give notice as
12 required by [section 5(1)] may be fined an amount not less
13 than \$100 or more than \$500.

14 (6) A person who violates a provision of this section
15 or any term or condition of a permit issued under [section
16 6] is subject to a civil penalty not to exceed \$2,000 for
17 the first violation and not to exceed \$10,000 for a
18 subsequent violation.

19 NEW SECTION. **Section 9. Civil penalty and damages**
20 **actions.** (1) [Sections 1 through 10 and 13] do not preclude
21 civil actions for damages.

22 (2) The board may bring an action under [section 8] for
23 a civil penalty.

24 NEW SECTION. **Section 10. Closure of board meetings.**
25 The board may close part of a meeting of the board to the

public if the board finds that information that may be acquired at that part of the meeting may allow a person to identify a burial site, human skeletal remains, or burial material and pilfer, disturb, or destroy the human skeletal remains, burial site, or burial material.

Section 11. Section 2-6-101, MCA, is amended to read:

"2-6-101. Definitions. (1) Writings are of two kinds:

- (a) public; and
- (b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country;

(b) public records, kept in this state, of private writings, except as provided in 22-1-1103 and [section 7].

(3) Public writings are divided into four classes:

- (a) laws;
- (b) judicial records;
- (c) other official documents;

(d) public records, kept in this state, of private writings.

(4) All other writings are private."

Section 12. Section 2-6-102, MCA, is amended to read:

"2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103 or [section 7] and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him on demand a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing."

NEW SECTION. Section 13. Disposition of fees, grants, and donations. (1) There is an account in the state special revenue fund. The board shall deposit any fee, grant, or donation received under [section 4] into the account to be used to pay expenses for board meetings or expenses incurred in conducting field reviews.

(2) The money in the account is statutorily appropriated to the board as provided in 17-7-502.

Section 14. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be

1 effective, a statutory appropriation must comply with both
2 of the following provisions:

3 (a) The law containing the statutory authority must be
4 listed in subsection (3).

5 (b) The law or portion of the law making a statutory
6 appropriation must specifically state that a statutory
7 appropriation is made as provided in this section.

8 (3) The following laws are the only laws containing
9 statutory appropriations: 2-9-202; 2-17-105; 2-18-312;
10 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-27-304; 15-1-111;
11 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121;
12 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404;
13 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007;
14 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
15 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111;
16 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016;
17 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150;
18 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101;
19 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136;
20 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306;
21 [section 13]; and section 13, House Bill No. 861, Laws of
22 1985.

23 (4) There is a statutory appropriation to pay the
24 principal, interest, premiums, and costs of issuing, paying,
25 and securing all bonds, notes, or other obligations, as due,

1 that have been authorized and issued pursuant to the laws of
2 Montana. Agencies that have entered into agreements
3 authorized by the laws of Montana to pay the state
4 treasurer, for deposit in accordance with 17-2-101 through
5 17-2-107, as determined by the state treasurer, an amount
6 sufficient to pay the principal and interest as due on the
7 bonds or notes have statutory appropriation authority for
8 such payments. (In subsection (3), pursuant to sec. 10, Ch.
9 664, L. 1987, the inclusion of 39-71-2504 terminates June
10 30, 1991.)"

11 NEW SECTION. Section 15. Appropriation. There is
12 appropriated \$10,000 from the general fund to the board for
13 the 2 fiscal years beginning July 1, 1991, to be used to pay
14 expenses for board meetings or expenses incurred in
15 conducting field reviews.

16 NEW SECTION. Section 16. Severability. If a part of
17 [this act] is invalid, all valid parts that are severable
18 from the invalid part remain in effect. If a part of [this
19 act] is invalid in one or more of its applications, the part
20 remains in effect in all valid applications that are
21 severable from the invalid applications.

22 NEW SECTION. Section 17. Effective dates. (1)
23 [Sections 4, 13, 14, 16, and this section] are effective on
24 passage and approval.

25 (2) [Sections 1 through 3, 5 through 12, 15, and 18]

94

1 are effective July 1, 1991.

2 NEW SECTION. **Section 13.** Termination. [Sections 13(2)

3 and 14] terminate on June 30, 1993.

-End-

76

GOVERNOR'S AMENDMENTS TO
House BILL 131
(REFERENCE COPY, AS AMENDED)
APRIL 5, 1991

1. Page 6, line 19.
Following: "appointed"
Insert: "by the governor from a list of up to three nominees submitted"
2. Page 6, line 22.
Following: "by the"
Strike: "coordinator of Indian affairs"
Insert: "governor"
3. Page 6, line 25 and page 7, line 1.
Following: "by the"
Strike: "state medical examiner"
Insert: "governor"
4. Page 7, line 3.
Following: "by the"
Strike: "coordinator of Indian affairs"
Insert: "governor"
5. Page 7, line 7.
Following: line 6
Strike: "attorney general"
Insert: "governor"
6. Page 12.
Following: line 14
Insert: "(9) The disinterment and disposition of the human skeletal remains or burial materials must be completed by the board, tribe or cultural group within 40 days after discovery of the remains or burial materials and notification regarding those remains has been made to the coroner."

Conference Committee
on House Bill 131
Report No. 1, April 23, 1991

4/23/91
2:30 PM
BLS

Page 1 of 2

April 23, 1991
Page 2 of 2

Mr. Speaker and Mr. President:

We, your Conference Committee on House Bill 131 met and considered the Governor's amendments to House Bill 131, dated April 5, 1991, and recommend that House Bill 131 (reference copy -- salmon) be amended as follows:

1. Page 6, line 19.
Following: "appointed"
Insert: "by the governor from a list of up to three nominees submitted"
2. Page 6, line 22.
Following: "the"
Strike: "coordinator of Indian affairs"
Insert: "governor"
3. Page 6, line 25 through page 7, line 1.
Following: "the"
Strike: remainder of line 25 through "examiner" on page 7, line 1
Insert: "governor"
4. Page 7, line 3.
Following: "the"
Strike: "coordinator of Indian affairs"
Insert: "governor"
5. Page 7, line 7.
Following: line 6
Strike: "attorney general"
Insert: "governor"
6. Page 11, lines 18 through 20.
Following: "provide" on line 18
Insert: ", within 40 days after notification to the board,
Following: "board," on line 19
Insert: "the human skeletal remains and burial materials must be removed and"
Following: "control" on line 19
Strike: remainder of line 19 through "materials" on line 20
Following: "board" on line 20
Strike: "and the"
Insert: ". The"

And this Conference Committee report be adopted.

For the House:

Brooke
Rep. Brooke, Chair

B. Barnhart
Rep. Barnhart

Grady
Rep. Grady

For the Senate:

W. Yellowtail
Sen. Yellowtail, Chair

Svrcek
Sen. Svrcek

Gage
Sen. Gage

ADOPT
REJECT

860933CC.HSF

CCR #1
HB 131
860933CC.HSF



"AN ACT CREATING THE HUMAN SKELETAL REMAINS AND BURIAL SITE PROTECTION ACT; CREATING A BURIAL PRESERVATION BOARD; ESTABLISHING REPORTING AND NOTIFICATION PROCEDURES REGARDING DISTURBANCE OF A BURIAL SITE; PROVIDING FOR FIELD REVIEW AND SCIENTIFIC ANALYSIS; PROVIDING DISINTERMENT AND REINTERMENT PROCEDURES; PROVIDING FOR FEES AND CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR DISPOSITION OF FEES, GRANTS, AND DONATIONS; EXEMPTING PARTS OF MEETINGS FROM THE OPEN MEETING LAWS UNDER CERTAIN CONDITIONS; PROVIDING FOR CONFIDENTIALITY OF RECORDS; GRANTING THE BOARD RULEMAKING AUTHORITY; PROVIDING FOR A 2-YEAR STATUTORY APPROPRIATION; APPROPRIATING MONEY FROM THE GENERAL FUND; AMENDING SECTIONS 2-6-101, 2-6-102, AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] grants to the burial preservation board rulemaking authority to implement the provisions of this bill. At a minimum, it is the intent of the legislature that the board adopt rules:

- (1) governing the conduct of board business;
- (2) establishing and maintaining a registry of burial sites located in the state;
- (3) establishing criteria for conducting field reviews upon notification of a discovery of human skeletal remains, burial sites, or burial materials; and

(4) establishing guidelines and forms for the issuance of a permit for scientific analysis of human remains or burial materials.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [Sections 1 through 10 and 13] may be cited as the "Human Skeletal Remains and Burial Site Protection Act".

Section 2. Legislative findings and intent. (1) The legislature of the state of Montana finds that:

(a) the state and its citizens have an obligation to protect from disturbance or destruction all human skeletal remains, burial sites, and burial material, including those in marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds located on state or private lands that are not protected as cemeteries or graveyards under existing state law;

(b) marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds not protected as cemeteries or graveyards under existing state law are increasingly subject to pilferage, disturbance, and destruction for commercial purposes, including land development, agriculture, mining, and the sale of artifacts;

(c) private collection of artifacts may result in the destruction of burial sites. Existing law reflects the value society places on preserving human burial sites, but the law does not clearly provide equal and adequate protection or incentives to

ensure preservation and protection of all burial sites in the state regardless of ethnic origin, burial context, or age.

(d) while some human skeletal remains and burial sites may be of interest to science, the needs of the scientific community to gather information and material from burial sites must be balanced with the legal, moral, and religious rights and obligations of tribal groups, next of kin, or descendants;

(e) preservation in place is the preferred policy for all human skeletal remains, burial sites, and burial material; and

(f) notwithstanding any other provision of law, [sections 1 through 10 and 13] are the exclusive laws governing the treatment of human skeletal remains, burial sites, and burial materials.

(2) It is the intent of the legislature to:

(a) ensure that all burials be accorded equal treatment and respect for human dignity without reference to ethnic origin, cultural background, or religious affiliation;

(b) provide adequate protection for all interests related to any burial site encountered during archaeological excavation or agricultural, mining, construction, or other ground-disturbing activity on state and private lands without causing avoidable or undue delay or hardship for any person who has an interest in using the land on which the burial site is located;

(c) recognize the interests, concerns, and obligations of those having a kinship, tribal, cultural, or religious affiliation with the burial site and balance those interests against the

interests of scientists, landowners, and developers;

(d) provide to the board an exemption from the open meeting and public records laws when public disclosure of the location of a burial site could result in pilferage, disturbance, or destruction of the site; and

(e) recognize the need for forensic examination of human skeletal remains, burial sites, and burial material if the county coroner, county attorney, or state medical examiner determines an examination is necessary under state law.

Section 3. Definitions. As used in [sections 1 through 10 and 13], the following definitions apply:

(1) "Board" means the burial preservation board established in [section 4].

(2) "Burial material" means any item found at the burial site or with the human skeletal remains and directly associated with the burial or burial site.

(3) "Burial site" means, except for cemeteries and graveyards protected under existing state law, any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were intentionally deposited as a part of the death rites or ceremonies of a culture.

(4) "Human skeletal remains" means any part of the human body in any state of decomposition taken from a burial site.

(5) "Marked, unmarked, unrecorded, registered, or unregistered grave or burial ground" means any place, except a

cemetery or graveyard protected under existing state law, where human skeletal remains are or have been interred.

(6) "Scientifically justifiable" means that the human skeletal remains or burial material has a potential to address specific research questions in the science of anthropology, history, or biology.

(7) "Tribal group" means an Indian tribe recognized by the United States secretary of the interior or recognized as a tribe by other Indian nations.

Section 4. Board -- composition -- rights -- responsibilities. (1) There is a burial preservation board. The board is composed of:

(a) one representative of each of the seven reservations, appointed by the governor from a list of up to three nominees provided by each of the respective tribal governments;

(b) one person appointed by the governor from a list of up to three nominees submitted by the Little Shell band of Chippewa Indians;

(c) one person appointed by the governor from a list of up to three nominees submitted by the Montana state historic preservation officer;

(d) one representative of the Montana archaeological association appointed by the governor from a list of up to three nominees submitted by the Montana archaeological association;

(e) one physical anthropologist appointed by the governor;

(f) one representative of the Montana coroners' association appointed by the governor from a list of up to three nominees submitted by the Montana coroners' association; and

(g) one representative of the public, appointed by the governor, who is not associated with tribal governments; state government; the fields of historic preservation, archaeology, or anthropology; or the Montana coroners' association.

(2) Members of the board shall serve staggered 2-year terms. A vacancy on the board must be filled in the same manner as the original appointment and only for the unexpired portion of the term.

(3) The board shall:

(a) provide for the establishment and maintenance of a registry of burial sites located in the state;

(b) designate the appropriate member or members of the board or a representative or representatives of the board to conduct a field review upon notification of the discovery of human skeletal remains, a burial site, or burial materials;

(c) assist interested landowners in the development of agreements with the board for the treatment and disposition, with appropriate dignity, of human skeletal remains and burial material;

(d) mediate, upon application of either party, disputes that may arise between a landowner and known descendants that relate to the treatment and disposition of human skeletal remains and burial

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material;

(e) assume responsibility for final treatment and disposition of human skeletal remains and burial material if the field review recommendation is not accepted by the board's representatives and the landowner;

(f) establish a nonrefundable application fee, not to exceed \$50, for a permit for scientific analysis of human skeletal remains or burial material from burial sites as provided by [section 6];

(g) issue permits authorizing scientific analysis;

(h) accept grants or real or in-kind donations to carry out the purposes of [sections 1 through 10 and 13];

(i) adopt rules necessary to administer and enforce the provisions of [sections 1 through 10 and 13]; and

(j) perform any other duties necessary to implement the provisions of [sections 1 through 10 and 13].

(4) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(5) Members of the board shall serve without pay but are entitled to reimbursement for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503.

Section 5. Discovery -- reporting requirements -- field review. (1) A person who by archaeological excavation or by agricultural, mining, construction, or other ground-disturbing activity discovers human skeletal remains, a burial site, or

burial material shall immediately notify the county coroner. Failure to notify the county coroner subjects a person to the penalty provided in [section 8].

(2) Upon discovery of human skeletal remains, a burial site, or burial material, excavation or further disturbance must cease until the coroner has determined whether the remains are subject to the provisions of Title 46, chapter 4, or any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death or whether a forensic examination of the human skeletal remains, burial site, or burial material is necessary. The coroner shall make his determination within 2 working days from the time the person responsible for the excavation notifies him of the discovery or recognition of the remains. If the coroner cannot make the determination within 2 working days, he shall notify a member of the board of the reason for and the approximate length of the delay. The coroner shall take all reasonable steps to make his determination without removing or causing further disturbance of the remains.

(3) If a forensic examination, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death is necessary and yields evidence of criminal activity, the evidence may be seized by the coroner or law enforcement agency with jurisdiction for use in a criminal proceeding as provided by law.

(4) If the coroner determines that the remains are not subject to the provisions of Title 46, chapter 4, or any other provisions of law concerning the investigation of the circumstances, manner, and cause of death and that a forensic examination is not necessary, he shall telephone the state historic preservation officer within 24 hours. Within 24 hours of notification, the state historic preservation officer shall contact either the landowner and the board or the landowner and the board member representing the nearest reservation and notify them of the discovery of human skeletal remains, a burial site, or burial material.

(5) If the state historic preservation officer cannot be contacted, the coroner shall notify a member of the board or the law enforcement agency of the nearest reservation within 24 hours. The board or the agency shall immediately notify the landowner and the board member representing that reservation.

(6) Within 36 hours after the board receives notification of a discovery of human skeletal remains, a burial site, or burial material, the board shall designate representatives to conduct, with the permission of the landowner, an initial field review. If the field review cannot be completed within the next 36 hours, the board's representatives shall negotiate with the landowner or his representative for a reasonable time extension to complete the review. The field review must include:

- (a) a determination of whether the site can be preserved;

(b) negotiation with the landowner concerning onsite reburial or disinterment and reburial; and

(c) a recommendation, including a timeframe, concerning final treatment or disposition of the human skeletal remains or burial material.

(7) If the board's representatives fail to make a recommendation or if the landowner and the board cannot agree and mediation fails to provide, within 40 days after notification to the board, a resolution acceptable to the landowner and the board, the human skeletal remains and burial materials must be removed and control is vested in the board. The board shall give control of the remains or materials in the following priority to:

- (a) the descendants, if identifiable;

- (b) the tribe or other cultural group that has the closest cultural affiliation with the human skeletal remains or burial materials;

- (c) the tribe or other cultural group recognized as having aboriginally or historically occupied the area where the remains or materials were discovered if, upon notification by the board, the tribe or cultural group states a claim for the remains or materials; or

- (d) if unclaimed by any tribe or cultural group, the board, which shall determine the appropriate disposition and oversee the reinterment of the remains and materials.

(8) For purposes of this section, "cultural group" means a

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present-day group or organization that has a relationship of shared group identity which can be reasonably traced historically or prehistorically to an identifiable earlier group or organization.

Section 6. Scientific analysis -- permit required. (1) Although onsite reburial is preferred, the board may, upon petition by a person seeking permission to perform scientific analysis, grant a permit for the scientific removal and analysis of human skeletal remains and burial material upon proof and determination by the board that the analysis is scientifically justifiable. A petition for a permit must include:

(a) payment of the nonrefundable application fee provided for in [section 4]; and

(b) a brief narrative describing the methodology to be used, the timeframe needed to complete the scientific study, and any other information specifically requested by the board relating to the proposed study.

(2) The methodology proposed must be reviewed by the state historic preservation officer or his designated representative and the physical anthropologist on the board, and a recommendation must be made to the full board. Once approved by the board, any change in methodology or in the timeframe must be approved by the board before the original timeframe expires. The timeframe for scientific study may not exceed 12 months from the date of issuance of the permit.

(3) A permit for scientific analysis issued by the board is subject to terms, conditions, and procedures prescribed by the board and must include the condition that a permittee shall pay all costs of excavation, study, and disposition.

(4) The board shall either issue or deny a permit within 30 working days from the date of the permit petition. If the board denies a permit upon a finding that scientific analysis is not justifiable, the board shall provide the applicant with a written statement outlining the grounds for its finding. The applicant may appeal the decision of the board under the provisions of Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(5) The board may suspend or revoke a permit pursuant to the Montana Administrative Procedure Act upon a finding that the permittee has violated any provision of [sections 1 through 10 and 13] or any term, condition, or procedure of a permit issued by the board.

(6) The provisions of this section do not apply to a forensic examination by the county coroner, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death.

Section 7. Nondisclosure of records. (1) The state historic preservation officer, in consultation with the board, shall maintain burial site records that are separate and distinct from those in the cultural resource registry and that are necessary to

administer [sections 1 through 10 and 13].

(2) Burial site records are confidential and available only to criminal justice agencies or to federal, state, and tribal personnel or their appointed representatives legally charged with administering laws protecting cultural resources.

(3) Statistical information compiled from burial site records must be made available to the general public. Any information concerning burial site records that is released to a criminal justice agency is confidential criminal justice information, as defined in 44-5-103, and is subject to dissemination pursuant to 44-5-303.

Section 8. Prohibited acts -- penalties. (1) After July 1, 1991, unless authorized under [sections 1 through 10 and 13] or by the descendants, tribe, cultural group, or other person, group, or entity to which the board gives control of the human skeletal remains or burial materials under [section 5], a person may not:

(a) purposely or knowingly pilfer, disturb, destroy, or permit pilferage, disturbance, or destruction of a marked, unmarked, unrecorded, registered, or unregistered grave or burial ground or of burial material;

(b) for commercial use, knowingly possess, buy, sell, transport, barter, or display human skeletal remains or burial material acquired in violation of [sections 1 through 10 and 13];
or

(c) purposely or knowingly disclose information knowing that

it is highly probable that the disclosure will lead to pilferage, disturbance, or destruction of a burial site.

(2) A person convicted under the provisions of subsection (1)(a) may be fined an amount not to exceed \$1,000, be imprisoned in the county jail for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(a) may be fined an amount not to exceed \$20,000, be imprisoned for not more than 5 years, or both.

(3) A person convicted under the provisions of subsection (1)(b) may be fined an amount not to exceed \$50,000, be imprisoned for not more than 20 years, or both.

(4) A person convicted under the provisions of subsection (1)(c) may be fined an amount not to exceed \$500, be imprisoned for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(c) may be fined an amount not to exceed \$10,000, be imprisoned for not more than 5 years, or both.

(5) A person who knowingly fails to give notice as required by [section 5(1)] may be fined an amount not less than \$100 or more than \$500.

(6) A person who violates a provision of this section or any term or condition of a permit issued under [section 6] is subject to a civil penalty not to exceed \$2,000 for the first violation and not to exceed \$10,000 for a subsequent violation.

Section 9. Civil penalty and damages actions. (1) [Sections 1

through 10 and 13] do not preclude civil actions for damages.

(2) The board may bring an action under [section 8] for a civil penalty.

Section 10. Closure of board meetings. The board may close part of a meeting of the board to the public if the board finds that information that may be acquired at that part of the meeting may allow a person to identify a burial site, human skeletal remains, or burial material and pilfer, disturb, or destroy the human skeletal remains, burial site, or burial material.

Section 11. Section 2-6-101, MCA, is amended to read:

"2-6-101. Definitions. (1) Writings are of two kinds:

- (a) public; and
- (b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country;

(b) public records, kept in this state, of private writings, except as provided in 22-1-1103 and [section 7].

(3) Public writings are divided into four classes:

- (a) laws;
- (b) judicial records;
- (c) other official documents;

(d) public records, kept in this state, of private writings.

(4) All other writings are private."

Section 12. Section 2-6-102, MCA, is amended to read:

"2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103 or [section 7] and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him on demand a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing."

Section 13. Disposition of fees, grants, and donations. (1) There is an account in the state special revenue fund. The board shall deposit any fee, grant, or donation received under [section 4] into the account to be used to pay expenses for board meetings or expenses incurred in conducting field reviews.

(2) The money in the account is statutorily appropriated to the board as provided in 17-7-502.

Section 14. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative

appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; [section 13]; and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been

authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. (In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)"

Section 15. **Appropriation.** There is appropriated \$10,000 from the general fund to the board for the 2 fiscal years beginning July 1, 1991, to be used to pay expenses for board meetings or expenses incurred in conducting field reviews.

Section 16. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 17. **Effective dates.** (1) [Sections 4, 13, 14, 16, and this section] are effective on passage and approval.

(2) [Sections 1 through 3, 5 through 12, 15, and 18] are effective July 1, 1991.

Section 18. **Termination.** [Sections 13(2) and 14] terminate on June 30, 1993.